

Legislative Analysis



REPEAL OF CERTAIN ABORTION-RELATED LAWS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4006 (H-1) as reported
Sponsor: Rep. Laurie Pohutsky

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4031 as reported
Sponsor: Rep. Felicia Brabec

House Bill 4032 as reported
Sponsor: Rep. Stephanie A. Young

Committee: Judiciary
Complete to 3-2-23

SUMMARY:

House Bill 4006 would repeal sections 14 and 15 of the Michigan Penal Code.

Section 14 provides that a person who willfully administers to a pregnant individual any medicine, drug, or substance, or uses an instrument or any other means, with the intent to cause a miscarriage (except when necessary to protect the life of the pregnant individual) is guilty of a felony. If the pregnant individual dies as a result, it is considered manslaughter.

Section 15 requires that any drug or medicine known to be designed and expressly prepared for producing an abortion must have a written prescription by a practicing physician of the city, village, or township where the sale is made. The druggist or dealer selling the drug or medicine must register, in a book provided for that purpose, the name of the purchaser, the date of the sale, the kind and quantity of the medicine sold, and the name and residence of the physician prescribing the drug or medicine. The section provides that, unless done as described above, it is a misdemeanor to advertise, publish, sell, or publicly expose for sale any pills, powder, drugs, or combination of drugs, designed expressly for the use of females for the purpose of procuring an abortion.

MCL 750.14 and 750.15 (repealed)

House Bill 4031 would amend the Corrections Code. The code bars individuals convicted and sentenced for committing any of several listed criminal offenses from eligibility for special parole or for parole before they have served their minimum sentence (less an allowance for any disciplinary credits). A violation of section 14 of the Michigan Penal Code is included in this list of crimes. The bill would amend the reference to section 14 to reflect the repeal of that section as proposed by HB 4006.

MCL 791.233b

House Bill 4032 would amend the sentencing guidelines in the Code of Criminal Procedure to eliminate the guidelines for a violation of section 14 of the Michigan Penal Code to conform with the proposed repeal of that section by HB 4006. Currently, a violation of the prohibition regarding abortion has a maximum term of imprisonment of four years, and abortion causing

the death of the pregnant woman has a maximum term of imprisonment of 15 years. Both offenses are Class C felonies against a person.

MCL 777.16a

Tie-bars

House Bills 4031 and 4032 are each tie-barred to HB 4006, which means that those bills cannot take effect unless HB 4006 is also enacted into law.

BACKGROUND:

Section 14 of the Michigan Penal Code was enacted in 1931 and provides that a person who willfully administers to a pregnant individual any medicine, drug, or substance, or uses an instrument or any other means, with the intent to cause a miscarriage (except when necessary to protect the life of the pregnant individual) is guilty of a felony. If the pregnant individual dies as a result, it is considered manslaughter.

After the 1973 U.S. Supreme Court decision in *Roe v Wade*, section 14 was declared unconstitutional by the Michigan Supreme Court as it relates to an abortion performed in the first trimester of a pregnancy “as authorized by the pregnant woman’s attending physician in exercise of his medical judgment.”¹

Roe was overturned in June 2022, when the U.S. Supreme Court held that “the constitution does not confer a right to abortion” and returned the issue to the states to decide.²

In November 2022, Michigan voters approved Ballot Proposal 3, which added section 28 to Article 1 of the state constitution. Among other things, section 28 provides that “[e]very individual has a fundamental right to reproductive freedom,” which includes “the right to make and effectuate decisions about all matters relating to pregnancy.”

Section 28 also allows the state to regulate the provision of abortion care after fetal viability, which it defines as “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.”

BRIEF DISCUSSION:

House Bill 4006 centers on repealing a 1931 law that makes it a felony offense to perform an abortion except to save the life of the pregnant individual. The companion bills, HBs 4031 and 4032, would remove references in other laws to that provision. The bills are largely seen as “clean up” legislation that would remove a law that was held largely unconstitutional under *Roe*, remained unenforceable after the *Dobbs* decision, and is now seen as moot after voters, by a large margin, supported Proposal 3 in the 2022 general election thereby enshrining its reproductive freedom provisions in the state constitution. Outdated or obsolete laws and laws held to be unconstitutional under either state or federal law are often repealed. Proponents

¹ *People v Brickner*, 389 Mich 524 (1973).

² *Dobbs v Jackson Women’s Health Organization*, No. 19-1392, 597 U.S. ____ (2022).

argue that the bills would remove laws that, although deemed unenforceable, still act to intimidate and create uncertainty regarding lawful choices pertaining to both personal decisions and medical decisions that should remain between a physician and a patient.

Supporters of the bills also argue that repealing sections 14 and 15 should not endanger the health and safety of pregnant individuals because other laws, such as scope of practice and medical malpractice laws for medical professionals, standards of care by medical societies, and administrative rules and regulations, as well as sanctions imposed by medical licensing boards, provide both guidance and sanctions for medical professionals when providing health care to pregnant individuals. In addition, the Penal Code prescribes criminal penalties for certain criminal or grossly negligent acts committed against a pregnant individual that cause the individual to suffer a miscarriage or stillbirth or that harm the embryo or fetus. These current laws, regulations, and medical standards of care should continue to protect pregnant individuals from harm in a broad range of circumstances without interfering with or impeding the provision of health care for the well-being of a pregnant individual.

Some, however, see sections 14 and 15 as providing additional protections for a pregnant individual from acts committed by a nonphysician that result in miscarriage or abortion. They point to post-*Roe* court decisions that have allowed prosecutions under the 1931 law as recently as 2019. Abortions, even when provided by physicians, can result in complications that result in the death of or injury to the pregnant individual. A nonphysician who uses an implement or a drug or other substance to induce a miscarriage or abortion, or even advertises such methods, should face criminal charges for endangering the health of pregnant individuals.

Further, some argue that the new reproductive freedom amendment contains several undefined terms that, depending on interpretation, could have unintended consequences that lead to harm to pregnant individuals. Until it is seen how the new law will be implemented—as to what it will and will not allow and how well it affords protections to the health of pregnant individuals—they feel, the current laws that are enforceable under court decisions should remain on the books.

FISCAL IMPACT:

The bills would have no fiscal impact on state or local government.

POSITIONS:

Representatives of the following entities testified in support of the bills (3-1-23):

- ACLU of Michigan
- Planned Parenthood of Michigan

The following entities indicated support for the bills (3-1-23):

- Michigan Council for Maternal and Child Health
- Michigan Society of Hematology and Oncology
- Michigan Nurses Association
- Michigan Academy of Family Physicians
- Michigan League for Public Policy
- League of Women Voters of Michigan

- American College of Obstetricians and Gynecologists (ACOG)

A representative of the Michigan Catholic Conference testified in opposition to the bills.
(3-1-23)

The following entities indicated opposition to the bills (3-1-23):

- Salt and Light Global
- Mid-Michigan Women for Conservative Values
- Right to Life of Michigan
- Citizens for Traditional Values

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Robin Risko
Victoria Amponsah

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.