



Senate Fiscal Agency  
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## BILL ANALYSIS

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Senate Bill 2 (as enacted)  
Sponsor: Senator Erika Geiss  
Senate Committee: Health Policy  
House Committee: Judiciary

### **PUBLIC ACT 12 of 2023**

Date Completed: 5-8-23

### **CONTENT**

The bill repeals Section 40 of the Michigan Penal Code, which prohibits the publication or sale of a publication that contains recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases, or recipes for compounds to prevent conception or that tend to produce miscarriage or abortion. Section 40 also specifies that a seller or publisher of these documents is guilty of a misdemeanor for a violation.

The bill will take effect 91 days after the Legislature adjourns sine die.

MCL 750.40 (repealed)

### **BRIEF RATIONALE**

The passage of Proposal 22-3 (see **BACKGROUND**), which enshrined the individual right to reproductive freedom in the Michigan Constitution, invalidated State laws that conflicted with the Proposal's amendments. It was suggested that various State laws be amended or repealed to agree with the Proposal's provisions.

### **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.<sup>1</sup> 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.<sup>2</sup> 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.

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 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

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<sup>1</sup> 410 US 113 (1973)

<sup>2</sup> 597 US \_\_\_\_.

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.<sup>3</sup> Proposal 22-3 passed with 56.66% of electors in favor of the proposal.<sup>4</sup>

Legislative Analyst: Alex Krabill

### **FISCAL IMPACT**

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

Fiscal Analyst: Joe Carrasco, Jr.

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<sup>3</sup> "November 2022 Ballot Proposal 22-3", Senate Fiscal Agency.

<sup>4</sup> "2022 Michigan Election Results", The Office of Secretary of State Jocelyn Benson. Available at: [https://mielections.us/election/results/2022GEN\\_CENR.html](https://mielections.us/election/results/2022GEN_CENR.html). Retrieved on 2-28-2023.

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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.