

HOUSE BILL NO. 4949

September 07, 2023, Introduced by Reps. Pohutsky, Arbit, Hope, Koleszar, Brixie, Dievendorf, Price, Glanville, Morse, Rheingans, Wilson, Tsernoglou, Steckloff, Liberati, Stone, Paiz, Byrnes, Mentzer, Breen, Skaggs, Brabec, Hoskins, Haadsma, Young, Wegela, Hood, Conlin, MacDonell, Hill, Grant, Weiss and Morgan and referred to the Committee on Health Policy.

A bill to list certain constitutional rights related to reproductive freedom; to prohibit the violation of certain rights and provide remedies; to provide for the powers and duties of certain state and local governmental officers and entities; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

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

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

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

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

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

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

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

10 Sec. 3. (1) As provided in section 28 of article I of the
11 state constitution of 1963, the following apply in this state:

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

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

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

27 (d) The state shall not penalize, prosecute, or otherwise take
28 adverse action against an individual based on their actual,
29 potential, perceived, or alleged pregnancy outcomes, including, but

1 not limited to, miscarriage, stillbirth, or abortion. Nor shall the
2 state penalize, prosecute, or otherwise take adverse action against
3 someone for aiding or assisting a pregnant individual in exercising
4 their right to reproductive freedom with their voluntary consent.

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

13 Sec. 5. (1) An individual or entity, or the individual's or
14 entity's legal representative, who alleges a violation of the
15 individual's or entity's rights under section 28 of article I of
16 the state constitution of 1963 or section 3 by a governmental
17 entity may bring a civil action for injunctive relief, damages, or
18 any other appropriate remedy, in the appropriate state or federal
19 court.

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

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

25 Sec. 7. A governmental entity shall not violate section 28 of
26 article I of the state constitution of 1963.

27 Enacting section 1. The following acts and parts of acts are
28 repealed:

29 (a) Sections 90h and 323 of the Michigan penal code, 1931 PA

1 328, MCL 750.90h and 750.323.

2 (b) The legal birth definition act, 2004 PA 135, MCL 333.1081
3 to 333.1085.

4 (c) 2002 PA 360, MCL 333.1091.

5 (d) The Abortion Insurance Opt-Out Act, 2013 PA 182, MCL
6 550.541 to 550.551.

7 Enacting section 2. This act does not take effect unless all
8 of the following bills of the 102nd Legislature are enacted into
9 law:

10 (a) Senate Bill No. _____ or House Bill No. 4950 (request no.
11 00312'23 a *).

12 (b) Senate Bill No. _____ or House Bill No. 4958 (request no.
13 03049'23 *).