

## **PUBLICATION OF RECIPES FOR SUBSTANCES TO PREVENT CONCEPTION OR CAUSE MISCARRIAGE**

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

**Senate Bill 2 as reported from House committee**

**Sponsor: Sen. Erika Geiss**

**House Committee: Judiciary**

**Senate Committee: Health Policy**

**Complete to 3-22-23**

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

*(Enacted as Public Act 12 of 2023)*

### **SUMMARY:**

Senate Bill 2 would repeal section 40 of the Michigan Penal Code. Section 40, which was codified in 1931, currently makes it a misdemeanor offense to publish or sell in Michigan a circular, pamphlet, or book that contains either of the following:

- Recipes or prescriptions in indecent or obscene language for the cure of chronic female complaints or private diseases.
- Recipes or prescriptions for drops, pills, tinctures, or other compounds designed to prevent conception or that tend to produce miscarriage or abortion.

MCL 750.40

### **BACKGROUND:**

Senate Bill 2 is part of a package of House and Senate bills that propose to repeal statutes related to abortion that appear to have been rendered moot or otherwise inoperable by the adoption of Ballot Proposal 3 in November 2022. That proposal added section 28 to Article I of the state constitution, which, among other things, provides that “[e]very individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy.” Other bills include Senate Bills 37, 38, 39, 93, and 147 and House Bills 4006, 4031, and 4032. House Bills 4006 and 4032 have been passed by both chambers and ordered enrolled.

### **BRIEF DISCUSSION:**

The prohibitions contained in section 40 of the Michigan Penal Code were originally in a law that predated the federal Comstock Act, an 1873 law that, among other things, made the dissemination of contraceptives in the mail and across state lines a criminal offense. A 1936 U.S. Circuit Court of Appeals decision<sup>1</sup> lifted that restriction, and the entire act was held unconstitutional by the U.S. Supreme Court in 1965 as interfering with the right to privacy.<sup>2</sup> Moreover, in a case concerning a Virginia law that prohibited encouraging or prompting the process of an abortion in publications that had been applied to a newspaper advertising abortion services in a nearby state, the Supreme Court concluded that the state law unconstitutionally infringed on the defendant’s First Amendment rights.<sup>3</sup>

<sup>1</sup> *United States v One Package*, 86 F.2d 737 (1936).

<sup>2</sup> *Griswold v Connecticut*, 381 US 479 (1965).

<sup>3</sup> *Bigelow v Virginia*, 421 US 809 (1975).

**FISCAL IMPACT:**

The bill would have no fiscal impact on the state or local units of government.

**POSITIONS:**

Representatives of the following entities testified in support of the bill (3-15-23):

- ACLU of Michigan
- Planned Parenthood of Michigan

The following entities indicated opposition to the bill (3-15-23):

- Right to Life of Michigan
- Michigan Catholic Conference
- Heritage Action for America

Legislative Analyst: Susan Stutzky  
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■ 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.