

Act No. 209
Public Acts of 2023
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Anthony, Geiss, Polehanki, Cavanagh, Klinefelt, McCann, Chang, Shink, Bayer, Wojno, Hertel, Brinks and Irwin

ENROLLED SENATE BILL No. 474

AN ACT to amend 1978 PA 368, entitled “An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates,” by amending sections 2690, 2803, 2848, 2854, 9141, 10102, 16221, 16226, 16245, 16299, 17015, and 20115 (MCL 333.2690, 333.2803, 333.2848, 333.2854, 333.9141, 333.10102, 333.16221, 333.16226, 333.16245, 333.16299, 333.17015, and 333.20115), section 2690 as amended by 2016 PA 386, section 2803 as amended by 2020 PA 54, sections 2848, 17015, and 20115 as amended and section 2854 as added by 2012 PA 499, section 9141 as added by 2004 PA 501, section 10102 as amended by 2008 PA 39, section 16221 as amended by 2023 PA 47, section 16226 as amended by 2023 PA 48, section 16245 as amended by 2014 PA 413, and section 16299 as amended by 2020 PA 375; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 2690. (1) A person shall not knowingly sell, collect any fee for, transfer, distribute, or give away an embryo, fetus, or neonate for a use that is in violation of sections 2685 to 2689.

(2) Except as otherwise provided in subsection (3), a physician, or a person associated with the physician, who, as a result of the physician's performing an abortion, possesses a dead embryo, fetus, or neonate shall not knowingly financially benefit from or receive any type of compensation for either of the following:

(a) Allowing a person that was not involved in the performance of the abortion to have access to the embryo, fetus, or neonate for the purpose of the person taking possession and control of the embryo, fetus, or neonate, including the organs, tissues, or cells of the embryo, fetus, or neonate.

(b) Transferring possession and control of the embryo, fetus, or neonate, including the organs, tissues, or cells of the embryo, fetus, or neonate, to a person that was not involved in the performance of the abortion.

(3) Subsection (2) does not apply to any of the following:

(a) A hospital.

(b) A person that is performing an activity as part of that person's employment with a hospital or a contract with a hospital.

(c) A person that performs an activity under section 2688.

(4) As used in this section:

(a) "Abortion" means that term as defined in section 2803.

(b) "Hospital" means a hospital licensed under article 17.

(c) "Person associated with the physician" means any of the following:

(i) An employee of the physician or other individual who assists the physician in performing an abortion.

(ii) A private physician practice, professional corporation, or freestanding surgical outpatient facility licensed under article 17, that is owned or operated by the physician and in which an abortion is performed.

(iii) A private physician practice, professional corporation, or freestanding surgical outpatient facility licensed under article 17, that employs or contracts with the physician to perform an abortion.

Sec. 2803. (1) "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.

(2) "Allowable individual" means an individual who is the subject of a birth record that is only available through the office of the state registrar and who meets any of the following:

(a) The individual was born in the jurisdiction of the office of the local registrar where the certified copy of the birth record is being sought.

(b) If the individual was adopted, the individual's adoption was ordered by a probate court that is located in the jurisdiction of the office of the local registrar where the certified copy of the birth record is being sought.

(3) "Dead body" means a human body or fetus, or a part of a dead human body or fetus, in a condition from which it may reasonably be concluded that death has occurred.

(4) "Fetal death" means the death of a fetus that has completed at least 20 weeks of gestation or weighs at least 400 grams. Fetal death includes a stillbirth. The definition of fetal death must conform in all other respects as closely as possible to the definition recommended by the federal agency responsible for vital statistics.

(5) "Fetal remains" means a dead fetus or part of a dead fetus that has completed at least 10 weeks of gestation or has reached the stage of development that, upon visual inspection of the fetus or part of the fetus, the head, torso, or extremities appear to be supported by skeletal or cartilaginous structures. Fetal remains do not include the umbilical cord or placenta.

(6) "File" means to present a certificate, report, or other record to the local registrar for registration by the state registrar.

(7) "Final disposition" means the burial, cremation, interment, or other legal disposition of a dead body or fetal remains.

Sec. 2848. (1) Except as otherwise provided in sections 2844 and 2845, a funeral director or person acting as a funeral director, who first assumes custody of a dead body, not later than 72 hours after death or the finding of a dead body and before final disposition of the body, shall obtain authorization for the final disposition. The authorization for final disposition of a dead body must be issued on a form prescribed by the state registrar and signed by the local registrar or the state registrar.

(2) Unless the mother has provided written consent for research on the dead fetus under section 2688, before final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director or person assuming responsibility for the final disposition of the fetus or fetal remains shall obtain from the parents, or parent if the mother is unmarried, an authorization for final disposition on a form prescribed and furnished or approved by the state registrar. The authorization may allow final disposition to be by a funeral director, the individual in charge of the institution where the fetus was delivered or miscarried, or an institution or agency authorized to accept donated bodies, fetuses, or fetal remains under this act. The parents, or parent if the mother is unmarried, may direct the final disposition to be interment or cremation as those terms are defined in section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522, or incineration. After final disposition, the funeral director, the individual in charge of the institution, or other person making the final disposition shall retain the permit for not less than 7 years. This section as amended by 2012 PA 499 does not require a religious service or ceremony as part of the final disposition of fetal remains.

(3) If final disposition is by cremation, the medical examiner of the county in which death occurred shall sign the authorization for final disposition.

(4) A body may be moved from the place of death to be prepared for final disposition with the consent of the physician or county medical examiner who certifies the cause of death.

(5) A permit for disposition issued under the law of another state that accompanies a dead body or dead fetus brought into this state is authorization for final disposition of the dead body or dead fetus in this state.

Sec. 2854. A person who violates this part by failing to obtain the proper authorization for final disposition of a dead body as provided under section 2848 is responsible for a state civil infraction as provided under chapter 88 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8801 to 600.8835, and may be ordered to pay a civil fine of not more than \$1,000.00 per violation.

Sec. 9141. (1) The department shall establish and administer a grant program to provide grants for the purchase of ultrasound equipment. The department shall use the grant program to make grants to qualified entities that apply for a grant and that do not have at least 2 ultrasound machines.

(2) The ultrasound equipment fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund including, but not limited to, state revenues, federal money, gifts, bequests, donations, and money from any other source provided by law. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(3) The department shall use the fund to make grants as provided under subsection (1) for the purchase of ultrasound equipment and to cover the administrative costs of the department and the department of treasury in implementing and administering this grant program. An application for a grant under the grant program must be made on a form or format prescribed by the department. The department may require the applicant to provide information reasonably necessary to allow the department to make a determination required under this section. In making its determination, the department shall give priority to those applicants that do not have an ultrasound machine or that have only 1 ultrasound machine that is outdated based on industry standards. The director of the department shall have final approval of grants made under this section and the director shall only approve grants if the money is available in the fund.

(4) A cash match of at least 50% of the grant or other repayment guarantee with a dedicated funding source is required before a grant can be awarded.

(5) The department shall not make a grant to a qualified entity for the purchase of ultrasound equipment unless the following conditions are met:

(a) The entity provides family planning or reproductive health services to low-income women at no cost or at a reduced cost.

(b) The entity agrees to comply with each of the following:

(i) Shall have at least 1 ultrasound monitor that is fully accessible to the pregnant individual to view during the performance of the individual's ultrasound.

(ii) Inform each pregnant individual upon whom the ultrasound equipment is used that the individual has the right to view the ultrasound image.

(iii) If the ultrasound equipment is capable, inform each pregnant individual upon whom the ultrasound equipment is used that the individual has the right to record the ultrasound image for the individual's own records if the individual provides the entity with the videocassette, film, or other medium now known or later developed on which images can be recorded or otherwise stored.

(iv) Certify in writing that the individual was offered an opportunity to view the ultrasound image, obtain the individual's acceptance or rejection to view the image in writing, and maintain a copy of each in the individual's medical file.

(v) Shall have a trained medical professional or a qualified medical director on staff to perform the ultrasound.

(6) The department shall annually prepare a report summarizing the grants made under this section, contractual commitments made and achieved, and a preliminary evaluation of the effectiveness of this section and shall provide a copy of this report to the chairs of the house of representatives and senate appropriations subcommittees for the department.

(7) The department may promulgate rules under the administrative procedures act of 1969 to implement this grant program.

(8) As used in this section:

(a) "Entity" means a local agency, organization, or corporation or a subdivision, contractee, subcontractee, or grant recipient of a local agency, organization, or corporation.

(b) "Fund" means the ultrasound equipment fund created under subsection (2).

(c) "Qualified entity" means an entity reviewed and determined by the department to satisfy all of the conditions required under subsection (5) and to be technically and logistically capable of providing the quality and quantity of services required within a cost range considered appropriate by the department.

Sec. 10102. As used in this part:

(a) "Adult" means an individual who is at least 18 years of age.

(b) "Agent" means an individual who meets 1 or more of the following requirements:

(i) Is authorized to make health care decisions on the principal's behalf by a power of attorney for health care.

(ii) Is expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(c) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(d) "Body part" means an organ, eye, or tissue of a human being. The term does not include the whole body.

(e) "Decedent" means a deceased individual whose body or body part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to this subdivision and restrictions imposed by law other than this part, a fetus. The term does not include a blastocyst, embryo, or fetus that is the subject of an abortion. As used in this subdivision, "abortion" means that term as defined in section 2803.

(f) "Disinterested witness" means a witness who is not a spouse, child, parent, sibling, grandchild, grandparent, or guardian of or other adult who exhibited special care and concern for the individual who makes, amends, revokes, or refuses to make an anatomical gift. The term does not include a person to which an anatomical gift could pass under section 10111.

(g) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver license, identification card, or donor registry.

(h) "Donor" means an individual whose body or body part is the subject of an anatomical gift.

(i) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts as provided for in section 10120.

(j) "Driver license" means an operator's or chauffeur's license or permit issued to an individual by the secretary of state under chapter III of the Michigan vehicle code, 1949 PA 300, MCL 257.301 to 257.329, for that individual to operate a vehicle, whether or not conditions are attached to the license or permit.

(k) "Eye" means a human eye or any portion of a human eye.

(l) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(m) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(n) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(o) "Identification card" means an official state personal identification card issued by the secretary of state under 1972 PA 222, MCL 28.291 to 28.300.

- (p) “Know” means to have actual knowledge.
- (q) “Minor” means an individual who is under 18 years of age.
- (r) “Organ” means a human kidney, liver, heart, lung, pancreas, or intestine or multivisceral organs when transplanted at the same time as an intestine.
- (s) “Organ procurement organization” means a person certified or recertified by the Secretary of the United States Department of Health and Human Services as a qualified organ procurement organization under 42 USC 273(b).
- (t) “Parent” means a parent whose parental rights have not been terminated.
- (u) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality or any other legal or commercial entity.
- (v) “Physician” means an individual authorized to practice medicine or osteopathic medicine and surgery under the law of any state.
- (w) “Procurement organization” means an eye bank, organ procurement organization, or tissue bank.
- (x) “Prospective donor” means an individual who is dead or near death and has been determined by a procurement organization to have a body part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.
- (y) “Reasonably available” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.
- (z) “Recipient” means an individual into whose body a decedent’s body part has been or is intended to be transplanted.
- (aa) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (bb) “Refusal” means a record created under section 10107 that expressly refuses to make an anatomical gift of an individual’s body or body part.
- (cc) “Sign” means that, with the present intent to authenticate or adopt a record, an individual does either of the following:
 - (i) Executes or adopts a tangible symbol.
 - (ii) Attaches to or logically associates with the record an electronic symbol, sound, or process.
- (dd) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (ee) “Technician” means an individual determined to be qualified to remove or process body parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.
- (ff) “Tissue” means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.
- (gg) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.
- (hh) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Sec. 16221. Subject to section 16221b, the department shall investigate any allegation that 1 or more of the grounds for disciplinary subcommittee action under this section exist, and may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony. After its investigation, the department shall provide a copy of the administrative complaint to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

- (a) Except as otherwise specifically provided in this section, a violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition that impairs, or may impair, the ability to safely and skillfully engage in the practice of the health profession.

(b) Personal disqualifications, consisting of 1 or more of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance use disorder as that term is defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee's or registrant's ability to practice in a safe and competent manner.

(iv) Declaration of mental incompetence by a court of competent jurisdiction.

(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's or registrant's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.

(xv) Conviction of a violation of section 90 of the Michigan penal code, 1931 PA 328, MCL 750.90, or a violation of a state or federal crime that is substantially similar to the violation described in this subparagraph. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of 1 or more of the following:

(i) Fraud or deceit in obtaining or renewing a license or registration.

(ii) Permitting a license or registration to be used by an unauthorized person.

(iii) Practice outside the scope of a license.

(iv) Obtaining, possessing, or attempting to obtain or possess a controlled substance or a drug as that term is defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Except as otherwise specifically provided in this section, unethical business practices, consisting of 1 or more of the following:

(i) False or misleading advertising.

(ii) Dividing fees for referral of patients or accepting kickbacks on medical or surgical services, appliances, or medications purchased by or in behalf of patients.

(iii) Fraud or deceit in obtaining or attempting to obtain third party reimbursement.

(e) Except as otherwise specifically provided in this section, unprofessional conduct, consisting of 1 or more of the following:

(i) Misrepresentation to a consumer or patient or in obtaining or attempting to obtain third party reimbursement in the course of professional practice.

(ii) Betrayal of a professional confidence.

(iii) Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service.

(iv) Either of the following:

(A) A requirement by a licensee other than a physician or a registrant that an individual purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee or registrant has a financial interest.

(B) A referral by a physician for a designated health service that violates 42 USC 1395nn or a regulation promulgated under that section. For purposes of this subdivision, 42 USC 1395nn and the regulations promulgated under that section as they exist on June 3, 2002 are incorporated by reference. A disciplinary subcommittee shall apply 42 USC 1395nn and the regulations promulgated under that section regardless of the source of payment for the designated health service referred and rendered. If 42 USC 1395nn or a regulation promulgated under that section is revised after June 3, 2002, the department shall officially take notice of the revision. Within 30 days after taking notice of the revision, the department shall decide whether or not the revision pertains to referral by physicians for designated health services and continues to protect the public from inappropriate referrals by physicians. If the department decides that the revision does both of those things, the department may promulgate rules to incorporate the revision by reference. If the department does promulgate rules to incorporate the revision by reference, the department shall not make any changes to the revision. As used in this sub-subparagraph, "designated health service" means that term as defined in 42 USC 1395nn and the regulations promulgated under that section and "physician" means that term as defined in sections 17001 and 17501.

(v) For a physician who makes referrals under 42 USC 1395nn or a regulation promulgated under that section, refusing to accept a reasonable proportion of patients eligible for Medicaid and refusing to accept payment from Medicaid or Medicare as payment in full for a treatment, procedure, or service for which the physician refers the individual and in which the physician has a financial interest. A physician who owns all or part of a facility in which the physician provides surgical services is not subject to this subparagraph if a referred surgical procedure the physician performs in the facility is not reimbursed at a minimum of the appropriate Medicaid or Medicare outpatient fee schedule, including the combined technical and professional components.

(vi) Any conduct by a licensee or registrant with a patient while the licensee or registrant is acting within the health profession for which the licensee or registrant is licensed or registered, including conduct initiated by a patient or to which the patient consents, that is sexual or may reasonably be interpreted as sexual, including, but not limited to, sexual intercourse, kissing in a sexual manner, or touching of a body part for any purpose other than appropriate examination, treatment, or comfort.

(vii) Offering to provide practice-related services, such as drugs, in exchange for sexual favors.

(viii) A violation of section 16655(4) by a dental therapist.

(f) Failure to notify under section 16222(3) or (4).

(g) Failure to report a change of name or mailing address as required in section 16192.

(h) A violation, or aiding or abetting in a violation, of this article or of a rule promulgated under this article.

(i) Failure to comply with a subpoena issued pursuant to this part, failure to respond to a complaint issued under this article, article 7, or article 8, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222(1) or 16223.

(j) Failure to pay an installment of an assessment levied under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, within 60 days after notice by the appropriate board.

(k) A violation of section 17013 or 17513.

(l) Failure to meet 1 or more of the requirements for licensure or registration under section 16174.

(m) A violation of section 17015, 17015a, or 17515.

(n) Failure to comply with section 9206(3).

(o) A violation of section 5654 or 5655.

(p) A violation of section 16274.

(q) A violation of section 17020 or 17520.

(r) A violation of the medical records access act, 2004 PA 47, MCL 333.26261 to 333.26271.

(s) A violation of section 17764(2).

(t) Failure to comply with the terms of a practice agreement described in section 17047(2)(a) or (b), 17547(2)(a) or (b), or 18047(2)(a) or (b).

(u) A violation of section 7303a(2).

(v) A violation of section 7303a(4) or (5).

(w) A violation of section 7303b.

(x) A violation of section 17754a.

(y) Beginning January 1, 2021, a violation of section 24507 or 24509.

Sec. 16226. (1) After finding the existence of 1 or more of the grounds for disciplinary subcommittee action listed in section 16221, a disciplinary subcommittee shall impose 1 or more of the following sanctions for each violation:

Violations of Section 16221

Subdivision (a), (b)(i), (b)(ii), (b)(iii), (b)(iv), (b)(v), (b)(vi), (b)(vii), (b)(ix), (b)(x), (b)(xi), or (b)(xii)

Subdivision (b)(viii)

Subdivision (b)(xiii)

Subdivision (b)(xiv) or (b)(xv)

Subdivision (c)(i)

Subdivision (c)(ii)

Subdivision (c)(iii)

Subdivision (c)(iv) or (d)(iii)

Subdivision (d)(i) or (d)(ii)

Subdivision (e)(i), (e)(iii), (e)(iv), (e)(v), (h), or (r)

Subdivision (e)(ii) or (i)

Subdivision (e)(vi), (e)(vii), or (e)(viii)

Subdivision (f)

Subdivision (g)

Subdivision (j)

Subdivision (k), (o), or (q)

Subdivision (l)

Subdivision (m) or (n)

Subdivision (p)

Subdivision (s)

Subdivision (t)

Subdivision (u) or (w)

Subdivision (v)

Subdivision (x)

Subdivision (y)

Sanctions

Probation, limitation, denial, suspension, revocation, permanent revocation, restitution, or fine.

Revocation, permanent revocation, or denial.

Permanent revocation for a violation described in subsection (5); otherwise, probation, limitation, denial, suspension, revocation, restitution, or fine.

Permanent revocation.

Denial, revocation, suspension, probation, limitation, or fine.

Denial, suspension, revocation, restitution, or fine.

Probation, denial, suspension, revocation, restitution, or fine.

Fine, probation, denial, suspension, revocation, permanent revocation, or restitution.

Reprimand, fine, probation, denial, or restitution.

Reprimand, fine, probation, limitation, suspension, revocation, permanent revocation, denial, or restitution.

Reprimand, probation, suspension, revocation, permanent revocation, restitution, denial, or fine.

Probation, suspension, revocation, limitation, denial, restitution, or fine.

Reprimand, denial, limitation, probation, or fine.

Reprimand or fine.

Suspension or fine.

Reprimand, probation, suspension, revocation, permanent revocation, or fine.

Reprimand, denial, or limitation.

Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.

Revocation.

Revocation, permanent revocation, fine, or restitution.

Denial, revocation, probation, suspension, limitation, reprimand, or fine.

Probation, limitation, denial, fine, suspension, revocation, or permanent revocation.

Denial, fine, reprimand, probation, limitation, suspension, revocation, or permanent revocation.

Subject to subsection (7), fine.

Fine.

(2) Determination of sanctions for violations under this section must be made by a disciplinary subcommittee. If, during judicial review, the court of appeals determines that a final decision or order of a disciplinary subcommittee prejudices substantial rights of the petitioner for 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, MCL 24.306, and holds that the final decision or order is unlawful and is to be set aside, the court shall state on the record the reasons for the holding and may remand the case to the disciplinary subcommittee for further consideration.

(3) A disciplinary subcommittee may impose a fine in an amount that does not exceed \$250,000.00 for a violation of section 16221(a) or (b). A disciplinary subcommittee shall impose a fine of at least \$25,000.00 if the violation of section 16221(a) or (b) results in the death of 1 or more patients.

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article, article 7, or article 8 or a rule promulgated under this article, article 7, or article 8 to satisfactorily complete an educational program, a training program, or a treatment program, a mental, physical, or professional competence examination, or a combination of those programs and examinations.

(5) A disciplinary subcommittee shall impose the sanction of permanent revocation for a violation of section 16221(b)(*xiii*) if the violation occurred while the licensee or registrant was acting within the health profession for which the licensee or registrant was licensed or registered.

(6) Except as otherwise provided in subsection (5) and this subsection, a disciplinary subcommittee shall not impose the sanction of permanent revocation under this section without a finding that the licensee or registrant engaged in a pattern of intentional acts of fraud or deceit resulting in personal financial gain to the licensee or registrant and harm to the health of patients under the licensee's or registrant's care. This subsection does not apply if a disciplinary subcommittee finds that a licensee or registrant has violated section 16221(b)(*xiv*) or (b)(*xv*).

(7) A disciplinary subcommittee shall impose a fine of not more than \$250.00 for each violation of section 16221(x).

Sec. 16245. (1) Except as otherwise provided in this section or section 16245a, an individual whose license is limited, suspended, or revoked under this part may apply to the individual's board or task force for a reinstatement of a revoked or suspended license or reclassification of a limited license pursuant to section 16247 or 16249.

(2) Except as otherwise provided in this section or section 16245a, an individual whose registration is suspended or revoked under this part may apply to the individual's board for a reinstatement of a suspended or revoked registration pursuant to section 16248.

(3) A board or task force shall reinstate a license or registration suspended for grounds stated in section 16221(j) on payment of the installment.

(4) Except as otherwise provided in this section or section 16245a, in case of a revoked license or registration, an applicant shall not apply for reinstatement before the expiration of 3 years after the effective date of the revocation. Except as otherwise provided in this section or section 16245a, in the case of a license or registration that was revoked for a violation of section 16221(b)(*vii*) or (*xiii*), a violation of section 16221(c)(*iv*) consisting of a felony conviction, any other felony conviction involving a controlled substance, or a violation of section 16221(p), an applicant shall not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The department shall return an application for reinstatement received before the expiration of the applicable time period under this subsection.

(5) The department shall provide an opportunity for a hearing before final rejection of an application for reinstatement unless the application is returned because the applicant is ineligible for reinstatement under subsection (4) or (9).

(6) Based on the recommendation of the disciplinary subcommittee for each health profession, the department shall adopt guidelines to establish specific criteria to be met by an applicant for reinstatement under this article, article 7, or article 8. The criteria may include corrective measures or remedial education as a condition of reinstatement. If a board or task force, in reinstating a license or registration, deviates from the guidelines adopted under this subsection, the board or task force shall state the reason for the deviation on the record.

(7) An individual who seeks reinstatement or reclassification of a license or registration under this section shall pay the application processing fee as a reinstatement or reclassification fee. If approved for reinstatement or reclassification, the individual shall pay the per year license or registration fee for the applicable license or registration period.

(8) An individual who seeks reinstatement of a revoked or suspended license or reclassification of a limited license under this section shall have a criminal history check conducted in accordance with section 16174 and submit a copy of the results of the criminal history check to the board with the individual's application for reinstatement or reclassification.

(9) An individual whose license is permanently revoked under section 16221 is ineligible for reinstatement. The department shall return an application for reinstatement received if the applicant is ineligible for reinstatement under this subsection.

Sec. 16299. (1) Except as otherwise provided in subsection (2), a person who violates or aids or abets another in a violation of this article, other than those matters described in sections 16294 and 16296, is guilty of a misdemeanor punishable as follows:

(a) For the first offense, by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(b) For the second or subsequent offense, by imprisonment for not more than 6 months or a fine of not less than \$200.00 nor more than \$500.00, or both.

(2) Subsection (1) does not apply to a violation of section 17015, 17015a, or 17515 or to a violation of this article for which another criminal penalty is specifically prescribed.

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 an individual 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 a condition which, on the basis of the physician's good-faith clinical judgment, so complicates the medical condition of a pregnant individual as to necessitate the immediate abortion of the individual's pregnancy to avert the individual's 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 pregnant:

(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 the patient's age, level of maturity, and intellectual capability, each of the following:

(i) The probable gestational age of the fetus the patient 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 health and human services.

(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 health and human services. If the procedure has not been recognized by the department of health and human

services, but is otherwise allowed under Michigan law, and the department of health and human services 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 health and human services 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 health and human services 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 of health and human services 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 of health and human services 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 must not require any information be supplied by the patient. The department of health and human services 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 the right to withhold or withdraw 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 the patient's 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 the patient 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) must 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 pregnant, 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 the patient 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 the patient's pregnancy is confirmed and the patient 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 the physician's 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 health and human services 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 must 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 of health and human services.

(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 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 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 of health and human services determines appropriate for the purpose.

(iii) State that as the result of an abortion, some individuals 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 the patient's physician for more personalized information.

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

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

(vii) Identify services available through public agencies to assist the patient and provide counseling should the patient 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 board 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) In developing the written standardized summaries for abortion procedures under subdivision (b), include in the summaries only medication that has 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 of health and human services shall ensure 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 must be organized geographically and 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 must be at least 8-1/2 inches by 14 inches, be printed in at least 44-point type, and contain at a minimum all of the following:

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

(B) A statement that help is available if an individual 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 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 must 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 must 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, a local health department shall comply with the following:

(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.

Sec. 20115. The department may promulgate rules to further define the term "health facility or agency" and the definition of a health facility or agency listed in section 20106 as required to implement this article. The department may define a specific organization as a health facility or agency for the sole purpose of certification authorized under this article. For purpose of certification only, an organization defined in section 20106(5), 20108(1), or 20109(4) is considered a health facility or agency. The term "health facility or agency" does not mean a visiting nurse service or home aide service conducted by and for the adherents of a church or religious denomination for the purpose of providing service for those who depend upon spiritual means through prayer alone for healing.

Enacting section 1. Sections 2835, 2836, 2837, 17014, 17016, 17017, 17516, 17517, and 22224 of the public health code, 1978 PA 368, MCL 333.2835, 333.2836, 333.2837, 333.17014, 333.17016, 333.17017, 333.17516, 333.17517, and 333.22224, are repealed.

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

(a) House Bill No. 4949.

(b) House Bill No. 4955.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor