

Act No. 133
Public Acts of 1993
Approved by the Governor
July 28, 1993
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**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senators Welborn, Miller, Dillingham, Dingell, Hart, Carl, Van Regenmorter, Koivisto, Geake, Wartner, Emmons, Arthurhultz, Holmes, O'Brien, Pridnia, DiNello, Posthumus, McManus, Honigman, Schwarz, DeGrow, Dunaskiss, Gougeon and Hoffman

ENROLLED SENATE BILL No. 384

AN ACT to amend sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 penalties and remedies; 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," as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws; and to add sections 9161, 17014, 17015, and 17515.

The People of the State of Michigan enact:

Section 1. Sections 16221 and 16226 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 15 of the Public Acts of 1989, being sections 333.16221 and 333.16226 of the Michigan Compiled Laws, are amended and sections 9161, 17014, 17015, and 17515 are added to read as follows:

Sec. 9161. (1) The department, in consultation with appropriate professional organizations and other appropriate state departments and agencies, shall distribute a pamphlet that contains information regarding prenatal care and parenting. The department may use an existing pamphlet or pamphlets containing information regarding prenatal care or parenting, or both, to comply with the requirements of this subsection. Whether the department develops its own pamphlet or uses an existing pamphlet or pamphlets to comply with this subsection, the department shall print copies of the pamphlet in English, Spanish, and in other languages, as determined appropriate by the department, and shall assure that the pamphlet is written in easily understood, nontechnical terms.

(2) The department shall distribute copies of the pamphlet required under subsection (1) to the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery. The department shall distribute copies of the pamphlet required under subsection (1) to other persons upon written request, at cost, and shall also distribute copies of the pamphlet upon request, free of charge, to physicians and to local health departments.

Sec. 16221. The department 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 relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that any of the following grounds exist:

(a) 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 which impairs, or may impair, the ability to safely and skillfully practice the health profession.

(b) Personal disqualifications, consisting of any of the following:

(i) Incompetence.

(ii) Subject to sections 16165 to 16170a, substance abuse as defined in section 6107.

(iii) Mental or physical inability reasonably related to and adversely affecting the licensee'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, a misdemeanor involving the illegal delivery, possession, or use of alcohol or a controlled substance, or a felony. 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 sections 520a to 520l of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520l of the Michigan Compiled Laws. 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, Act No. 328 of the Public Acts of 1931, being section 750.492a of the Michigan Compiled Laws. 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. 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 ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(c) Prohibited acts, consisting of any of the following:

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

(ii) Permitting the 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 as defined in section 7104 or a drug as defined in section 7105 without lawful authority; or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes.

(d) Unethical business practices, consisting of any 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) Unprofessional conduct, consisting of any 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) Directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from another person, place, facility, or business in which the licensee has a financial interest.

(f) Failure to report a change of name or mailing address within 30 days after the change occurs.

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

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

(i) Failure to pay an installment of an assessment levied pursuant to section 2504 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, as amended, being section 500.2504 of the Michigan Compiled Laws, within 60 days after notice by the appropriate board.

(j) A violation of section 17013 or 17513.

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

(l) A violation of section 17015 or 17515.

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

Sanctions

Subdivision (a), (b)(ii), (b)(iv), (b)(vi), or (b)(vii)	Probation, limitation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (b)(viii)	Revocation or denial.
Subdivision (b)(i), (b)(iii), (b)(v), (b)(ix), (b)(x), or (b)(xi)	Limitation, suspension, revocation, denial, probation, restitution, community service, or fine.
Subdivision (c)(i)	Denial, revocation, suspension, probation, limitation, community service, or fine.
Subdivision (c)(ii)	Denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(iii)	Probation, denial, suspension, revocation, restitution, community service, or fine.
Subdivision (c)(iv) or (d)(iii)	Fine, probation, denial, suspension, revocation, community service, or restitution.
Subdivision (d)(i) or (d)(ii)	Reprimand, fine, probation, community service, denial, or restitution.
Subdivision (e)(i)	Reprimand, fine, probation, limitation, suspension, community service, denial, or restitution.
Subdivision (e)(ii) or (h)	Reprimand, probation, suspension, restitution, community service, denial, or fine.
Subdivision (e)(iii) or (e)(iv)	Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution.
Subdivision (f)	Reprimand or fine.
Subdivision (g)	Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine.
Subdivision (i)	Suspension or fine.
Subdivision (j)	Reprimand or fine.
Subdivision (k)	Reprimand, denial, or limitation.
Subdivision (l)	Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine.

(2) Determination of sanctions for violations under this section shall 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 any of the grounds listed in section 106 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.306 of Michigan Compiled Laws, 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 of up to, but not exceeding, \$250,000.00 for a violation of section 16221(a) or (b).

(4) A disciplinary subcommittee may require a licensee or registrant or an applicant for licensure or registration who has violated this article or article 7 or a rule promulgated under this article or article 7 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.

Sec. 17014. The legislature recognizes that under federal constitutional law, a state is permitted to enact persuasive measures which favor childbirth over abortion, even if those measures do not further a health interest. Sections 17015 and 17515 are nevertheless designed to provide objective, truthful information, and are not intended to be persuasive. The legislature finds that the enactment of sections 17015 and 17515 is essential for all of the following reasons:

(a) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice regarding abortion.

(b) The decision to obtain an abortion is an important and often stressful one, and it is in the state's interest that the decision be made with full knowledge of its nature and consequences.

(c) Enactment of sections 17015 and 17515 is necessary to ensure that, before an abortion, a woman is provided information regarding her available alternatives, and to ensure that a woman gives her voluntary and informed consent to an abortion.

(d) The receipt of accurate information about abortion and its alternatives is essential to the physical and psychological well-being of a woman considering an abortion.

(e) Because many abortions in this state are performed in clinics devoted solely to providing abortions, women who seek abortions at these facilities normally do not have a prior patient-physician relationship with the physician performing the abortion nor do these women continue a patient-physician relationship with the physician after the abortion. In many instances, the woman's only actual contact with the physician performing the abortion occurs simultaneously with the abortion procedure, with little opportunity to receive counsel concerning her decision. Consequently, certain safeguards are necessary to protect a woman's opportunity to select the option best suited to her particular situation.

(f) This state has an interest in protecting women and, subject to United States constitutional limitations and supreme court decisions, this state has an interest in protecting the fetus.

(g) Providing a woman with factual, medical, and biological information about the fetus she is carrying is essential to safeguard the state's interests described in subdivision (f). The dissemination of the information set forth in sections 17015 and 17515 is necessary due to the irreversible nature of the act of abortion and the often stressful circumstances under which the abortion decision is made.

(h) The safeguards that will best protect a woman seeking advice concerning abortion include the following:

(i) Private, individual counseling, including dissemination of certain information, as the woman's individual circumstances dictate, that affect her decision of whether to choose an abortion.

(ii) A 24-hour waiting period between a woman's receipt of that information provided to assist her in making an informed decision, and the actual performance of an abortion, if she elects to undergo an abortion. A 24-hour waiting period affords a woman, in light of the information provided by the physician or a qualified person assisting the physician, an opportunity to reflect on her decision and to seek counsel of family and friends in making her decision.

(i) The safeguards identified in subdivision (h) advance a woman's interests in the exercise of her discretion to choose or not to choose an abortion, and are justified by the objectives and interests of this state to protect the health of a pregnant woman and, subject to United States constitutional limitations and supreme court decisions, to protect the fetus.

Sec. 17015. (1) Subject to subsection (7), a physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion.

(2) For purposes of this section:

(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 dead fetus. Abortion does not include the use or prescription of a drug or device intended as a contraceptive.

(b) "Fetus" means an individual organism of the species homo sapiens in utero.

(c) "Local health department representative" means a person employed by, or contracted to provide services on behalf of, a local health department who meets any of the licensing requirements listed in subsection (2)(e).

(d) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(e) "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 registered in this state under article 16 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.1601 to 339.1610 of the Michigan Compiled Laws.

(f) "Probable gestational age of the fetus" means the gestational age of the fetus at the time an abortion is planned to be performed, as determined by the attending physician.

(3) Subject to subsection (7), 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 pregnant woman:

(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 pregnant woman, taking into account her age, level of maturity, and intellectual capability, each of the following:

(i) The probable gestational age of the fetus she 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 public health.

(c) Preceded by an explanation that the patient has the option to review or not review the written summary, present to the patient the written summary described in subsection (8)(b) that corresponds to the procedure the patient will undergo and is provided by the department of public health or approved by the department of public health under subsection (8)(e).

(d) Preceded by an explanation that the patient has the option to review or not review the depiction and description, provide the patient with a copy of a medically accurate depiction and description of a fetus supplied by the department of public health pursuant to subsection (8)(a) at the gestational age nearest the probable gestational age of the patient's fetus.

(e) Provide the patient with a copy of the prenatal care and parenting information pamphlet distributed by the department of public health under section 9161.

(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 physician or qualified person assisting the physician may refer the patient to a local health department to have a pregnancy confirmed as required under subsection (3)(a), and to obtain the information required under subsection (3)(c) and subsection (3)(d).

(5) Subject to subsection (7), before performing an abortion, a physician shall do all of the following:

(a) Provide the patient with the physician's name and inform the patient of her right to withhold or withdraw her consent to the abortion at any time before performance of the abortion.

(b) Orally describe, in language designed to be understood by the pregnant woman, taking into account her 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 to the patient if she chooses to continue the pregnancy based on the patient's particular medical condition and history as determined by a physician.

(c) Obtain the patient's signature, on a form prepared or approved by the department, consenting to the abortion and acknowledging that she has received the information required in subsection (3), along with the explanations that she has the option to review or not review the written summary described in subsection (3)(c) and the depictions and descriptions described in subsection (3)(d). The physician shall retain a copy of the acknowledgment and consent form, and where applicable, the certification form completed under subsection (15), in the patient's medical record.

(d) Provide the patient with a copy of the written acknowledgment and consent form described in subsection (8)(c), or approved by the department under subsection (8)(e).

(6) To protect a woman's privacy, the information set forth in subsection (3) and subsection (5) shall not be disclosed to the woman in the presence of another patient.

(7) If the attending physician, utilizing his or her 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 (5) can be met, the physician is exempt from the requirements of subsections (1), (3) and (5), 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.

(8) The department of public health shall do each of the following:

(a) Produce medically accurate depictions of the development of a human fetus which reflect the actual size of the fetus at 4-week intervals from the fourth week through the twenty-eighth week of gestation, using curriculum materials from the Michigan model for comprehensive school health education for grade 6, phase IV, lesson 22 in use on January 1, 1992. Each depiction shall be accompanied by a printed description, in nontechnical English, Aramaic, and Spanish, of the probable anatomical and physiological characteristics of the fetus at that particular state of gestational development.

(b) Develop, draft, and print, in nontechnical English, Aramaic, 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.

(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 the annual statistical report required under section 2835(6), and shall consult with the United States center for disease control, the American college of obstetricians and gynecologists, the Michigan state medical society, or any other source that the department determines appropriate.

(iii) State that as the result of an abortion, some women 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 risks listed in subparagraph (ii) may pertain to that particular patient and refer the patient to her physician for more personalized information.

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

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

(vii) Identify services available through public agencies to assist the patient and provide counseling should she experience subsequent adverse psychological effects from the abortion.

(c) Develop, draft, and print, in nontechnical English, Aramaic, and Spanish, an acknowledgment and consent form that includes only the following language above a signature line for the patient:

"I, _____, 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))

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 prior to performance of that procedure. I acknowledge I have received the following:

(a) A copy of a medically accurate depiction of a fetus at the probable gestational age of the fetus I am carrying, preceded by an explanation that I have the option to review or not review the depiction.

(b) A description of the medical procedure that will be used to perform the abortion, preceded by an explanation that I have the option to review or not review the description.

(c) Information pertaining to potential risks and complications that have been associated with abortion and with live birth.

(d) Information about what to do and whom to contact in the event that complications arise from the abortion.

(e) Information pertaining to available pregnancy related services.

(f) A prenatal care and parenting information pamphlet.

I have been given an opportunity to ask questions about the operation(s) or procedure(s), and freely and voluntarily sign this form."

(d) Make available to physicians through the Michigan board of medicine and the Michigan board of osteopathic medicine and surgery, all local health departments, and any person upon request the copies of medically accurate depictions described in subdivision (a), the standardized written 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, and the certification form described in subdivision (f).

(e) Approve an alternative written summary or acknowledgment and consent form submitted by a physician for department of public health approval pursuant to this subsection, if the proposed summary or acknowledgment and consent form contains information substantially similar to the information described in subdivisions (b) and (c).

(f) Develop, draft, and print a certification form to be signed by a local health department representative at the time and place a patient is provided the information described in subsection (3) as requested by the patient, verifying the date and time the information is provided to that patient.

(9) 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.

(10) A written consent form meeting the requirements set forth in this section and signed by the pregnant woman 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.

(11) A completed certification form described in subsection (8)(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.

(12) This section does not create a right to abortion.

(13) Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

(14) 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 shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application, provided those remaining portions are not determined by the court to be inoperable.

(15) Upon an individual's request, each local health department shall:

(a) Provide a pregnancy test for that individual and determine the probable gestational stage of a confirmed pregnancy.

(b) Preceded by an explanation that the individual has the option to review or not review the written summaries, provide the summaries described in subsection (8)(b) that are recognized by the department as applicable to the individual's gestational stage of pregnancy.

(c) Preceded by an explanation that the individual has the option to review or not review the depiction and description, provide the individual with a copy of a medically accurate depiction and description of a fetus described in subsection (8)(a) at the gestational age nearest the probable gestational age of the patient's fetus.

(d) Ensure that the individual is provided with a completed certification form described in subsection (8)(f) at the time the information is provided.

(16) 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.

(17) 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. A local health department with a file containing the identity and address of a patient described in this subsection 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. 17515. A physician, before performing an abortion on a patient, shall comply with section 17015.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved _____

Governor.