# *2013 DRAFTING REQUEST*

## Bill

| | | | |
|---|---|---|---|
| Received: | **2/21/2013** | Received By: | **mduchek** |
| Wanted: | **As time permits** | Same as LRB: | |
| For: | **Garey Bies (608) 266-5350** | By/Representing: | **Tyler Sivret** |
| May Contact: | | Drafter: | **mduchek** |
| Subject: | **Health - abortion/maternal/child** | Addl. Drafters: | |
| | | Extra Copies: | |

Submit via email: **YES**
Requester's email: **Rep.Bies@legis.wisconsin.gov**
Carbon copy (CC) to: **tamara.dodge@legis.wi.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Disposal of fetal remains from abortions, per Michigan 2011 Senate Bill 54

**Instructions:**

See attached

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mduchek<br>4/4/2013 | | | | | | |
| /P1 | mduchek<br>5/13/2013 | evinz<br>5/13/2013 | rschluet<br>5/13/2013 | | srose<br>4/9/2013 | | State<br>S&L |
| /1 | | | | | sbasford<br>5/13/2013 | sbasford<br>5/13/2013 | State<br>S&L |

FE Sent For:
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| /1 | | | | | sbasford<br>5/13/2013 | | State<br>S&L |

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| /? | mduchek<br>4/4/2013 | | | | | Jacket for Assembly | |
| /P1 | | evinz<br>4/8/2013 | phenry<br>4/9/2013 | | srose<br>4/9/2013 | | State<br>S&L |

FE Sent For: 1 cov 5/13/13 5/13/13

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**Topic:**

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**Instructions:**

See attached

**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mduchek | plcev 4/8/13 | 4/9 ph | | | | |

FE Sent For:

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Act No. 499
Public Acts of 2012
Approved by the Governor
December 28, 2012
Filed with the Secretary of State
December 28, 2012
EFFECTIVE DATE: March 31, 2013

**STATE OF MICHIGAN**
**96TH LEGISLATURE**
**REGULAR SESSION OF 2012**

**Introduced by Rep. Rendon**

# ENROLLED HOUSE BILL No. 5711

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 2803, 2804, 2834, 2835, 2848, 13807, 16221, 16226, 16299, 17015, 17515, 20115, and 22224 (MCL 333.2803, 333.2804, 333.2834, 333.2835, 333.2848, 333.13807, 333.16221, 333.16226, 333.16299, 333.17015, 333.17515, 333.20115, and 333.22224), sections 2803, 2834, and 2848 as amended by 2002 PA 562, section 2804 as amended by 1990 PA 149, section 2835 as amended by 2010 PA 117, section 13807 as added by 1990 PA 21, section 16221 as amended by 2011 PA 222, section 16226 as amended by 2011 PA 224, section 16299 as amended by 2002 PA 685, section 17015 as amended by 2006 PA 77, section 17515 as added by 1993 PA 133, and section 20115 as amended and section 22224 as added by 1999 PA 206, and by adding sections 2836, 2854, 17015a, 17017, and 17517.

*The People of the State of Michigan enact:*

Sec. 2803. (1) "Abortion" means that term as defined in section 17015.

(2) "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.

(3) "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 shall conform in all other respects as closely as possible to the definition recommended by the federal agency responsible for vital statistics.

(4) "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.

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

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

Sec. 2804. (1) "Institution" means a public or private establishment that provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care to 2 or more unrelated individuals, including an establishment to which individuals are committed by law.

(2) "Law enforcement agency" means a police agency of a city, village, or township; a sheriff's department; the department of state police; and any other governmental law enforcement agency.

(3) "Live birth" means that term as defined in section 1 of the born alive infant protection act, 2002 PA 687, MCL 333.1071.

(4) "Local registrar" means the county clerk or the clerk's deputy, or in the case of a city having a population of 40,000 or more, the city clerk or city department designated by the governing body of the city; or a registrar appointed pursuant to section 2814. Population shall be determined according to the latest federal decennial census.

(5) "Miscarriage" means the spontaneous expulsion of a nonviable fetus that has completed less than 20 weeks of gestation.

(6) "Registration" means the acceptance by the state registrar and the incorporation of certificates provided for in this part into the official vital records.

Sec. 2834. (1) A fetal death occurring in this state shall be reported to the state registrar within 5 days after delivery. The state registrar shall prescribe the form and manner for reporting fetal deaths.

(2) The fetal death reporting form shall not contain the name of the biological parents, common identifiers such as social security or drivers license numbers, or other information identifiers that would make it possible to identify in any manner or in any circumstances the biological parents of the fetus. A state agency shall not compare data in an information system file with data in another computer system that would result in identifying in any way a woman or father involved in a fetal death. Statistical information that may reveal the identity of the biological parents involved in a fetal death shall not be maintained. This subsection does not apply after June 1, 2003.

(3) If a dead fetus that has completed at least 20 weeks of gestation or weighs at least 400 grams is delivered in an institution, the individual in charge of the institution or his or her authorized representative shall prepare and file the fetal death report and shall follow the protocols in place for the institution in the event of a death that occurs after a live birth but before being discharged from the institution.

(4) If a dead fetus that has completed at least 20 weeks of gestation or weighs at least 400 grams is delivered outside an institution, the physician in attendance shall prepare and file the fetal death report.

(5) If a fetal death occurs without medical attendance at or after the delivery or if inquiry is required by the medical examiner, the attendant, mother, or other person having knowledge of the fetal death shall notify the medical examiner who shall investigate the cause and prepare and file the fetal death report.

(6) The fetal death reports required under this section and filed before June 1, 2003 are confidential statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics. A schedule for the disposition of these reports shall be provided for by the department. The department or any employee of the department shall not disclose to any person outside the department the reports or the contents of the reports required by this section and filed before June 1, 2003 in a way that permits the person to whom the report is disclosed to identify the biological parents.

(7) The fetal death reports required under this section and filed on or after June 1, 2003 are permanent vital records documents and shall be incorporated into the system of vital statistics. Access to a fetal death report or information contained on a fetal death report is the same as a live birth record under sections 2882, 2883, and 2888.

(8) With information provided to the department under subsection (7), the department shall create a certificate of stillbirth that conforms as nearly as possible to recognized national standardized forms and includes, but is not limited to, the following information:

(a) The name of the fetus, if it was given a name by the parent or parents.

(b) The number of weeks of gestation completed.

(c) The date of delivery and weight at the time of delivery.

(d) The name of the parent or parents.

(e) The name of the institution in which the fetus was delivered or the name of the health professional in attendance if the delivery was outside an institution.

Sec. 2835. (1) As used in this section and section 2837, "physical complication" means a physical condition occurring during or after an abortion that, under generally accepted standards of medical practice, requires medical attention. Physical complication includes, but is not limited to, infection, hemorrhage, cervical laceration, or perforation of the uterus.

(2) A physician who performs an abortion shall report the performance of that procedure to the department on forms prescribed and provided by the department. A physician shall transmit a report required under this subsection to the director within 7 days after the performance of the abortion.

(3) Each report of an abortion required under subsection (2) shall contain only the following information and no other information:

(a) The age of the individual at the time of the abortion.

(b) The marital status of the individual at the time of the abortion.

(c) The race and, if applicable, Hispanic ethnicity of the individual.

(d) The city or township, county, and state in which the individual resided at the time of the abortion.

(e) The name and address of the facility and the type of facility in which the abortion was performed.

(f) The source of referral to the physician performing the abortion.

(g) The number of previous pregnancies carried to term.

(h) The number of previous pregnancies ending in spontaneous abortion.

(i) The number of previous pregnancies terminated by abortion.

(j) The method used before the abortion to confirm the pregnancy, the period of gestation in weeks of the present pregnancy, and the first day of the last menstrual period.

(k) The method used to perform the abortion.

(*l*) The weight of the embryo or fetus, if determinable.

(m) Whether the fetus showed evidence of life when separated, expelled, or removed from the individual.

(n) The date of performance of the abortion.

(o) The method and source of payment for the abortion.

(p) A physical complication or death resulting from the abortion and observed by the physician or reported to the physician or his or her agent before the report required under subsection (2) is transmitted to the director.

(q) The physician's signature and his or her state license number.

(4) The report required under subsection (2) shall not contain the name of the individual, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information system file with data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of an individual obtaining or seeking to obtain an abortion shall not be maintained.

(5) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for 5 years after the date the report is received.

(6) The department shall make available annually in aggregate a statistical report summarizing the information submitted in each individual report required by this section. The department shall specifically summarize aggregate data regarding all of the following in the annual statistical report:

(a) The period of gestation in 4-week intervals from 5 weeks through 28 weeks.

(b) Abortions performed on individuals aged 17 and under.

(c) Physical complications reported under subsection (3)(p) and section 2837.

(7) The reports required under this section are statistical reports to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital statistics.

(8) Except as otherwise provided in subsection (10), the department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required by this section in a manner or fashion so as to permit the person or entity to whom the report is disclosed to identify in any way the individual who is the subject of the report, the identity of the physician who performed the abortion, or the name or address of a facility in which an abortion was performed.

(9) A person who discloses confidential identifying information in violation of this section, section 2834(6), or section 2837 is guilty of a felony punishable by imprisonment for not more than 3 years or a fine of not more than $5,000.00, or both.

(10) The department may release the reports or the contents of the reports required by this section to the department of licensing and regulatory affairs for regulatory purposes only. The department of licensing and regulatory affairs or an employee of the department of licensing or regulatory affairs shall not disclose to a person or entity outside of the department of licensing and regulatory affairs the reports or the contents of the reports required by this section in a manner or fashion so as to permit the person or entity to whom the report is disclosed to identify in any way the individual who is the subject of the report, the identity of the physician who performed the abortion, or the name or address of a facility in which an abortion was performed.

Sec. 2836. (1) All fetal remains resulting from abortions shall be disposed of by interment or cremation as those terms are defined in section 2 of the cemetery regulation act, 1968 PA 251, MCL 456.522, or by incineration by a person other than a cemetery registered under the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543. Unless the mother has provided written consent for research on the fetal remains under section 2688, a physician who performs an abortion shall arrange for the final disposition of the fetal remains resulting from the abortion. Disposal of fetal remains resulting from an abortion may occur without the supervision of a funeral director.

(2) This section does not require a physician to discuss the final disposition of the fetal remains with the mother before performing the abortion, nor does it require a physician to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion.

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 shall be issued on a form prescribed by the state registrar and signed by the local registrar or the state registrar. Permit?

(2) Except as otherwise provided in section 2836, or 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 the amendatory act that added this sentence 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 dispose of fetal remains resulting from an abortion as prescribed in section 2836 or 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. 13807. (1) "Pathogen" means a microorganism that produces disease.

(2) "Pathological waste" means human organs, tissues, body parts other than teeth, products of conception, and fluids removed by trauma or during surgery, autopsy, or other medical procedure, and not fixed in formaldehyde. Pathological waste does not include a fetus or fetal body parts.

(3) "Point of generation" means the point at which medical waste leaves the producing facility site.

(4) "Producing facility" means a facility that generates, stores, decontaminates, or incinerates medical waste.

(5) "Products of conception" means any tissues or fluids, placenta, umbilical cord, or other uterine contents resulting from a pregnancy. Products of conception do not include a fetus or fetal body parts.

(6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of medical waste into the environment in violation of this part.

(7) "Response activity" means an activity necessary to protect the public health, safety, welfare, and the environment, and includes, but is not limited to, evaluation, cleanup, removal, containment, isolation, treatment, monitoring, maintenance, replacement of water supplies, and temporary relocation of people.

(8) "Sharps" means needles, syringes, scalpels, and intravenous tubing with needles attached.

(9) "Storage" means the containment of medical waste in a manner that does not constitute disposal of the medical waste.

(10) "Transport" means the movement of medical waste from the point of generation to any intermediate point and finally to the point of treatment or disposal. Transport does not include the movement of medical waste from a health facility or agency to another health facility or agency for the purposes of testing and research.

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 the taking of relevant testimony and shall report its findings 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) 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 practice 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 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 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 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 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 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 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, and 750.520f. 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 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 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 on behalf of patients.

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

(e) 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 that an individual 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.

(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 pursuant to 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 he or she provides surgical services is not subject to this subparagraph if a referred surgical procedure he or she 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.

(f) Beginning June 3, 2003, the department of consumer and industry services shall prepare the first of 3 annual reports on the effect of 2002 PA 402 on access to care for the uninsured and medicaid patients. The department shall report on the number of referrals by licensees of uninsured and medicaid patients 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.

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

(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 or article 7, failure to appear at a compliance conference or an administrative hearing, or failure to report under section 16222 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, 17017, 17515, or 17517.

(n) A violation of section 17016 or 17516.

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

(p) A violation of section 5654 or 5655.

(q) A violation of section 16274.

(r) A violation of section 17020 or 17520.

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

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

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*), (b)(*xi*), or (b)(*xii*) | Limitation, suspension, revocation, denial, probation, restitution, community service, or fine. |
| Subdivision (b)(*xiii*) | Probation, limitation, denial, suspension, revocation, restitution, community service, fine, or, subject to subsection (5), permanent revocation. |
| 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 (i) | Reprimand, probation, suspension, restitution, community service, denial, or fine. |
| Subdivision (e)(*iii*), (e)(*iv*), or (e)(*v*) | Reprimand, fine, probation, suspension, revocation, limitation, community service, denial, or restitution. |
| Subdivision (g) | Reprimand or fine. |
| Subdivision (h) or (s) | Reprimand, probation, denial, suspension, revocation, limitation, restitution, community service, or fine. |
| Subdivision (j) | Suspension or fine. |
| Subdivision (k), (p), or (r) | Reprimand or fine. |
| Subdivision (*l*) | Reprimand, denial, or limitation. |
| Subdivision (m) or (o) | Denial, revocation, restitution, probation, suspension, limitation, reprimand, or fine. |
| Subdivision (n) | Revocation or denial. |
| Subdivision (q) | Revocation. |
| Subdivision (t) | Revocation, fine, and restitution. |

(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 1 or more of the grounds listed in section 106 of the administrative procedures act of 1969, 1969 PA 306, 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 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.

(5) A disciplinary subcommittee shall not impose the sanction of permanent revocation for a violation of section 16221(b)(*xiii*) unless the violation occurred while the licensee or registrant was acting within the health profession for which he or she was licensed or registered.

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 less than 90 days nor 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, 17017, 17515, or 17517.

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 a person 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 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.

(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 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 patient, 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 community health.

(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 community health. If the procedure has not been recognized by the department, but is otherwise allowed under Michigan law, and the department 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 community health 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 community health 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 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 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 shall not require any information be supplied by the patient. The department 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 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 patient, 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, if any, 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.

(7) To protect a patient's privacy, the information set forth in subsection (3) and subsection (6) shall 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 a pregnant woman, 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 she 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 her pregnancy is confirmed and she 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 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 (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 community health 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 shall 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.

(*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, and 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 federal 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 determines appropriate for the purpose.

(*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 complications 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, 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 Michigan board of medicine 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) The department shall not develop written standardized summaries for abortion procedures under subdivision (b) that utilize medication that has not 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 shall assure 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 shall be organized geographically and shall 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 shall be at least 8-1/2 inches by 14 inches, shall be printed in at least 44-point type, and shall contain at a minimum all of the following:

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

(B) A statement that help is available if a woman 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 her 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 shall 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 shall 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, each local health department shall:

(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. 17015a. (1) At the time a patient first presents at a private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions are performed for the purpose of obtaining an abortion, whether before or after the expiration of the 24-hour period described in section 17015(3), the physician or qualified person assisting the physician shall orally screen the patient for coercion to abort using the screening tools developed by the department under section 17015(11). The oral screening required under this subsection may occur before the requirements of section 17015(3) have been met with regard to that patient.

(2) If a patient discloses that she is the victim of domestic violence that does not include coercion to abort, the physician or qualified person assisting the physician shall follow the protocols developed by the department under section 17015(11).

(3) If a patient discloses coercion to abort, the physician or qualified person assisting the physician shall follow the protocols developed by the department under section 17015(11).

(4) If a patient who is under the age of 18 discloses domestic violence or coercion to abort by an individual responsible for the health or welfare of the minor patient, the physician or qualified person assisting the physician shall report that fact to a local child protective services office.

(5) A private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions are performed shall post in a conspicuous place in an area of its facility that is accessible to patients, employees, and visitors the notice described in section 17015(11)(i). A private office, freestanding surgical outpatient facility, or other facility or clinic in which abortions are performed shall make available in an area of its facility that is accessible to patients, employees, and visitors publications that contain information about violence against women.

(6) This section does not create a right to abortion. Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

Sec. 17017. (1) This section and section 17517 do not apply after December 31, 2018.

(2) Except as otherwise provided in this section, a physician shall not diagnose and prescribe a medical abortion for a patient who is or is presumed to be pregnant unless the physician or an individual licensed and qualified by education and training first personally performs a physical examination of the patient. A physician shall not utilize other means including, but not limited to, an internet web camera, to diagnose and prescribe a medical abortion.

(3) A physician shall obtain the informed consent of a patient in the manner prescribed under section 17015 to perform a medical abortion. The physician shall be physically present at the location of the medical abortion when the

prescription drug used to initiate the medical abortion is dispensed. An individual under the direct supervision of the prescribing physician who is qualified by education and training as provided in this act may dispense or administer the prescription drug used to initiate the medical abortion.

(4) This section does not create a right to abortion. Notwithstanding any other provision of this section, a person shall not perform an abortion that is prohibited by law.

(5) As used in this section:

(a) "Abortion" means that term as defined in section 17015.

(b) "Medical abortion" means an abortion procedure that is not a surgical procedure and that utilizes a prescription drug to induce an abortion.

(c) "Prescription drug" means that term as defined in section 17708.

Sec. 17515. A physician, before performing an abortion on a patient, shall comply with sections 17015 and 17015a.

Sec. 17517. A physician shall comply with section 17017.

Sec. 20115. (1) 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.

(2) The department shall promulgate rules to differentiate a freestanding surgical outpatient facility from a private office of a physician, dentist, podiatrist, or other health professional. The department shall specify in the rules that a facility including, but not limited to, a private practice office described in this subsection must be licensed under this article as a freestanding surgical outpatient facility if that facility performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services.

(3) The department shall promulgate rules that in effect republish R 325.3826, R 325.3832, R 325.3835, R 325.3857, R 325.3866, R 325.3867, and R 325.3868 of the Michigan administrative code, but shall include in the rules standards for a freestanding surgical outpatient facility or private practice office that performs 120 or more surgical abortions per year and that publicly advertises outpatient abortion services. The department shall assure that the standards are consistent with the most recent United States supreme court decisions regarding state regulation of abortions.

(4) Subject to section 20145 and part 222, the department may modify or waive 1 or more of the rules contained in R 325.3801 to R 325.3877 of the Michigan administrative code regarding construction or equipment standards, or both, for a freestanding surgical outpatient facility that performs 120 or more surgical abortions per year and that publicly advertises outpatient abortion services, if both of the following conditions are met:

(a) The freestanding surgical outpatient facility was in existence and operating on December 31, 2012.

(b) The department makes a determination that the existing construction or equipment conditions, or both, within the freestanding surgical outpatient facility are adequate to preserve the health and safety of the patients and employees of the freestanding surgical outpatient facility or that the construction or equipment conditions, or both, can be modified to adequately preserve the health and safety of the patients and employees of the freestanding surgical outpatient facility without meeting the specific requirements of the rules.

(5) By January 15 each year, the department of community health shall provide the following information to the department of licensing and regulatory affairs:

(a) From data received by the department of community health through the abortion reporting requirements of section 2835, all of the following:

(*i*) The name and location of each facility at which abortions were performed during the immediately preceding calendar year.

(*ii*) The total number of abortions performed at that facility location during the immediately preceding calendar year.

(*iii*) The total number of surgical abortions performed at that facility location during the immediately preceding calendar year.

(b) Whether a facility at which surgical abortions were performed in the immediately preceding calendar year publicly advertises abortion services.

(6) As used in this section:

(a) "Abortion" means that term as defined in section 17015.

(b) "Publicly advertises" means to advertise using directory or internet advertising including yellow pages, white pages, banner advertising, or electronic publishing.

(c) "Surgical abortion" means an abortion that is not a medical abortion as that term is defined in section 17017.

Sec. 22224. (1) A health facility required to be licensed as a freestanding surgical outpatient facility by rules promulgated under section 20115(2) due to the performance of abortions at that facility is not required to obtain a certificate of need in order to be granted a license as a freestanding surgical outpatient facility. However, a health facility described in this subsection is subject to this part for the services performed at that facility other than abortions.

(2) If a freestanding surgical outpatient facility is applying for a certificate of need to initiate, replace, or expand a covered clinical service consisting of surgical services, the department shall not count abortion procedures in determining if the freestanding surgical outpatient facility meets the annual minimum number of surgical procedures required in the certificate of need standards governing surgical services.

(3) As used in this section, "abortion" means that term as defined in section 17015.

Enacting section 1. This amendatory act takes effect March 31, 2013.

Clerk of the House of Representatives

Secretary of the Senate

Approved .....

.....
Governor

## Dodge, Tamara

**From:** Sivret, Tyler
**Sent:** Tuesday, February 12, 2013 3:10 PM
**To:** Dodge, Tamara
**Subject:** Fetal Remains Bill

Good Afternoon,

I'm pretty sure the attached is the final draft that was passed by the MI state legislature.

FetalRemains.pdf

Thank you,
Tyler

---

Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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## Duchek, Michael

**From:** Sivret, Tyler
**Sent:** Thursday, February 21, 2013 11:22 AM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

Yes,

Thank you,
Tyler

---

Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael
**Sent:** Thursday, February 21, 2013 11:19 AM
**To:** Sivret, Tyler
**Subject:** RE: Fetal remains bill

OK, yes, that one looks like it was enacted. However, that bill appears (from looking at it briefly) to have dealt with more than just fetal remains. So, just so I am clear, are you only asking to have that part of the bill drafted related to fetal remains?

Mike

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**From:** Sivret, Tyler
**Sent:** Thursday, February 21, 2013 10:33 AM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

I may have sent the wrong bill. I thought I read the Senate substitute was the version that was ultimately signed by the Governor. I'll admit I didn't read the whole thing.

Here's a link to the House concurred version:
http://www.legislature.mi.gov/documents/2011-2012/billconcurred/House/pdf/2012-HCB-5711.pdf

And here's a link to the Act:
http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0499.pdf

If you can write a bill based on the act, then that's what we'd want to model it after. If you need a bill version, then the House concurred version is what we'd like.

Thank you,
Tyler

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Tyler Sivret

Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael
**Sent:** Thursday, February 21, 2013 8:49 AM
**To:** Sivret, Tyler
**Subject:** Fetal remains bill

Tyler,

I just wanted to let you know that I received the request for the fetal remains bill from Tami Dodge here at the LRB. I did not have a chance to look at it with respect to Wisconsin law yet, but did want to let you know that we checked and the bill you sent over from the Michigan state legislature did not pass both houses of Michigan's legislature last session, only one. I just thought I'd note let you know in case it makes any difference to you. Thanks,

**Mike Duchek**
**Legislative Attorney**
**Wisconsin Legislative Reference Bureau**
**(608) 266-0130**

## Duchek, Michael

**From:** Sivret, Tyler
**Sent:** Wednesday, March 20, 2013 4:10 PM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

Sorry about the wait, I have an answer!

Rep Bies just wants to make sure that all fetal deaths/remains are treated as human remains (so that they're buried, cremated, or incinerated) and not as medical waste. So if there are WI statues that already address things like stillbirths, there's no need to change them.

Thank you,
Tyler

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Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael
**Sent:** Tuesday, March 12, 2013 10:30 AM
**To:** Sivret, Tyler
**Subject:** RE: Fetal remains bill

Sounds good. Thanks

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**From:** Sivret, Tyler
**Sent:** Tuesday, March 12, 2013 10:29 AM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

Good Morning,

Rep Bies will not be in today, but he *should* be in tomorrow. So hopefully I'll have an answer for you then.

Thank you,
Tyler

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Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael

**Sent:** Friday, March 08, 2013 3:50 PM
**To:** Sivret, Tyler
**Subject:** RE: Fetal remains bill

Tyler,

I have been reading the Michigan bill and trying to understand it. I am not *entirely* clear on what the Michigan bill did exactly, due in part to the fact that it is a Michigan bill and operates with other Michigan law and because the use of some of the key terms in the bill is somewhat unclear. However, it appears that the bill requires some kind of "final disposition," which basically must be burial, cremation, or incineration, for fetal remains from both abortions and from miscarriages/stillbirths for a pregnancy that was at least 10 weeks along, also providing a doctor is not required to discuss final disposition with the mother in the case of abortions. Is that consistent with your understanding?

If so, would Rep. Bies like a bill that deals only with fetal remains resulting from abortions, or from miscarriages and stillbirths as well? I ask because Wisconsin law already has some provisions that address the final disposition of fetal remains resulting from stillbirths under section 69.18 (3) (e), Wis. stats. However, Wisconsin law is not entirely clear either, as the Wisconsin statutes do not explicitly define stillbirth, nor do they explicitly *require* any form of final disposition for stillbirths. However, Wisconsin law *does* place restrictions on final dispositions of stillbirths, and those restrictions would appear to conflict somewhat with what is in the Michigan bill.

So, in sum, I think my question is whether Rep. Bies would the bill to address all fetal deaths (including stillbirths/miscarriages), or only those resulting from abortions. And if he would like to address stillbirths and miscarriages, would you like me to leave current Wisconsin law alone or try to conform it to the Michigan bill?

Sorry for the confusing email. Feel free to call with any questions.

**Mike Duchek**
**Legislative Attorney**
**Wisconsin Legislative Reference Bureau**
**(608) 266-0130**

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**From:** Sivret, Tyler
**Sent:** Thursday, February 21, 2013 11:22 AM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

Yes,

Thank you,
Tyler

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Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael
**Sent:** Thursday, February 21, 2013 11:19 AM

**To:** Sivret, Tyler
**Subject:** RE: Fetal remains bill

OK, yes, that one looks like it was enacted. However, that bill appears (from looking at it briefly) to have dealt with more than just fetal remains. So, just so I am clear, are you only asking to have that part of the bill drafted related to fetal remains?

Mike

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**From:** Sivret, Tyler
**Sent:** Thursday, February 21, 2013 10:33 AM
**To:** Duchek, Michael
**Subject:** RE: Fetal remains bill

I may have sent the wrong bill. I thought I read the Senate substitute was the version that was ultimately signed by the Governor. I'll admit I didn't read the whole thing.

Here's a link to the House concurred version:
http://www.legislature.mi.gov/documents/2011-2012/billconcurred/House/pdf/2012-HCB-5711.pdf

And here's a link to the Act:
http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0499.pdf

If you can write a bill based on the act, then that's what we'd want to model it after. If you need a bill version, then the House concurred version is what we'd like.

Thank you,
Tyler

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Tyler Sivret
Legislative Assistant
1st Assembly District
Office Phone: 608-266-5350

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**From:** Duchek, Michael
**Sent:** Thursday, February 21, 2013 8:49 AM
**To:** Sivret, Tyler
**Subject:** Fetal remains bill

Tyler,

I just wanted to let you know that I received the request for the fetal remains bill from Tami Dodge here at the LRB. I did not have a chance to look at it with respect to Wisconsin law yet, but did want to let you know that we checked and the bill you sent over from the Michigan state legislature did not pass both houses of Michigan's legislature last session, only one. I just thought I'd note let you know in case it makes any difference to you. Thanks,

**Mike Duchek**
**Legislative Attorney**
**Wisconsin Legislative Reference Bureau**

(608) 266-0130

# State of Wisconsin
**2013 – 2014 LEGISLATURE**

LRB–1700/P1
MED:...

In 4-4-13

## PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SAW
xref!

D-note

Gen

AN ACT ...; **relating to:** disposition of fetal remains and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Current law contains restrictions on the final disposition of corpses and stillbirths, but does not explicitly require any particular form of final disposition of corpses or stillbirths. Current law does not contain any specific provisions with respect to the disposal or final disposition of fetal remains other than stillbirths.

This bill requires a physician who performs or induces an abortion to arrange for the final disposition of the fetal remains resulting from the abortion. The bill defines abortion as the use of an instrument, medicine, drug, or other substance or device with intent to terminate the pregnancy of a woman known to be pregnant or for whom there is reason to believe that she may be pregnant and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth, or to remove a dead fetus. The bill expressly provides that a physician is not required to discuss the final disposition of the fetal remains with the mother before performing or inducing an abortion, and is not required to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion.

The bill otherwise requires the funeral director or other person assuming responsibility for any fetal remains that are not the result of an abortion to arrange for the final disposition of those fetal remains.

For purposes of the bill, fetal remains are defined as the remains of a fetus that had completed at least 10 weeks of gestation or had 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. Under

the bill, final disposition for fetal remains resulting from an abortion may be by burial, interment, entombment, cremation, incineration, or delivery to a medical or dental school anatomy department as an anatomical gift.

A person who violates any of the provisions created in the bill may be required to forfeit up to $1,000 for each violation.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** Subchapter I (title) of chapter 157 [precedes 157.01] of the statutes is repealed and recreated to read:

**CHAPTER 157**

SUBCHAPTER I

HUMAN REMAINS

**SECTION 2.** 157.04 (title) of the statutes is repealed and recreated to read:

**157.04** (title) **Penalties.**

**SECTION 3.** 157.04 of the statutes is renumbered 157.04 (1).

**SECTION 4.** 157.04 (2) of the statutes is created to read:

157.04 **(2)** Any person who violates s. 157.053 (2) or (3) may be required to forfeit up to $1,000 for each violation.

**SECTION 5.** 157.053 of the statutes is created to read:

**157.053 Final disposition of fetal remains. (1)** In this section:

(a) "Abortion" has the meaning given in s. 253.10 (2) (a).

(b) "Fetal remains" means a dead fetus or part of a dead fetus that had completed at least 10 weeks of gestation or had 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" does not include the umbilical cord or placenta.

(c) "Final disposition" means the disposition of human remains by burial, interment, entombment, cremation, incineration, or delivery to a medical or dental school anatomy department under s. 157.06. "Final disposition" does not include disposition of the ashes produced by cremation or incineration of fetal remains.

**(2)** Subject to s. 69.18 (3) (e) and except as otherwise provided in sub. (3) (a), the funeral director or other person assuming responsibility for any fetal remains shall arrange for the final disposition of the fetal remains.

**(3)** (a) A physician who performs or induces an abortion shall arrange for the final disposition of the fetal remains resulting from the abortion.

(b) This subsection does not require a physician to discuss the final disposition of the fetal remains with the mother before performing or inducing an abortion and does not require a physician to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion.

**(END)**

D-note →

**DRAFTER'S NOTE**
**FROM THE**
**LEGISLATIVE REFERENCE BUREAU**

LRB-1700/P1dn
MED:

Date

This bill is modeled after parts of Michigan's 2012 Enrolled House Bill 5711 (Act 499). Please review it carefully, especially the definition of "fetal remains," which is taken from the Michigan bill. Also, note that the Michigan bill appears to define abortion to include surgical abortions and abortions induced by a drug, though Michigan bill may in fact be intended to be limited to surgical abortions by way of the definition of "fetal remains." I am, however, not entirely sure. Therefore, for this draft, I defined abortion by reference to s. 253.10 (2) (a), Wis. stats., which is similar to the Michigan definition and includes both surgical and medical abortions. Let me know if you would like to specifically limit the provision relating to abortions to surgical abortions or if you want to further address the provisions related to abortions some other way.

Otherwise, consistent with the instructions, in preparing this draft, I attempted to leave current Wisconsin law unaffected because provisions in the Michigan bill appeared to conflict in some regards with current Wisconsin law.

Please do not hesitate to let me know if you have any questions. I also recommend having the Department of Health Services review this draft to ensure that it will accomplish your intent.

Michael Duchek
Legislative Attorney
Phone: (608) 266–0130
E–mail: michael.duchek@legis.wisconsin.gov

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB-1700/P1dn
MED:eev:ph

April 9, 2013

This bill is modeled after parts of Michigan's 2012 Enrolled House Bill 5711 (Act 499). Please review it carefully, especially the definition of "fetal remains," which is taken from the Michigan bill. Also, note that the Michigan bill appears to define abortion to include surgical abortions and abortions induced by a drug, though the Michigan bill may in fact be intended to be limited to surgical abortions by way of the definition of "fetal remains." I am, however, not entirely sure. Therefore, for this draft, I defined abortion by reference to s. 253.10 (2) (a), Wis. Stats., which is similar to the Michigan definition and includes both surgical and medical abortions. Let me know if you would like to specifically limit the provision relating to abortions to surgical abortions or if you want to further address the provisions related to abortions in some other way.

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Please do not hesitate to let me know if you have any questions. I also recommend having the Department of Health Services review this draft to ensure that it will accomplish your intent.

Michael Duchek
Legislative Attorney
Phone: (608) 266-0130
E-mail: michael.duchek@legis.wisconsin.gov

# State of Wisconsin
## 2013 – 2014 LEGISLATURE

In 5-13-13

LRB–1700/1
MED:eev:ph

stays

**PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION**

No changes

Regen

AN ACT ***to renumber*** 157.04; ***to repeal and recreate*** subchapter I (title) of chapter 157 [precedes 157.01] and 157.04 (title); and ***to create*** 157.04 (2) and 157.053 of the statutes; **relating to:** disposition of fetal remains and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Current law contains restrictions on the final disposition of corpses and stillbirths, but does not explicitly require any particular form of final disposition of corpses or stillbirths. Current law does not contain any specific provisions with respect to the disposal or final disposition of fetal remains other than stillbirths.

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For purposes of the bill, fetal remains are defined as the remains of a fetus that had completed at least 10 weeks of gestation or had 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. Under the bill, final disposition for fetal remains resulting from an abortion may be by burial, interment, entombment, cremation, incineration, or delivery to a medical or dental school anatomy department as an anatomical gift.

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(c) "Final disposition" means the disposition of human remains by burial, interment, entombment, cremation, incineration, or delivery to a medical or dental school anatomy department under s. 157.06. "Final disposition" does not include disposition of the ashes produced by cremation or incineration of fetal remains.

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(b) This subsection does not require a physician to discuss the final disposition of the fetal remains with the mother before performing or inducing an abortion and does not require a physician to obtain authorization from the mother for the final disposition of the fetal remains upon completion of the abortion.

**(END)**