

HOUSE BILL No. 4789

June 16, 2011, Introduced by Reps. Johnson, Liss and Glardon and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 94

MICHIGAN CONSUMER HEALTH FREEDOM

SEC. 9401. (1) THIS PART MAY BE CITED AS THE "MICHIGAN
CONSUMER HEALTH FREEDOM LAW".

(2) THE LEGISLATURE FINDS ALL OF THE FOLLOWING:

(A) BASED UPON STUDIES, RESEARCH, AND PUBLIC POLICY
DECLARATIONS BY STATE GOVERNMENTS, INCLUDING A COMPREHENSIVE REPORT
BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES AND A STUDY
PUBLISHED BY THE "NEW ENGLAND JOURNAL OF MEDICINE", IT IS WIDELY

1 RECOGNIZED THAT THOUSANDS OF INDIVIDUALS IN THIS STATE ARE
2 PRESENTLY RECEIVING A SUBSTANTIAL AMOUNT OF HEALTH CARE FROM
3 PROVIDERS OF COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES WHO
4 ARE NOT LICENSED HEALTH CARE PROFESSIONALS. THAT INFORMATION
5 FURTHER INDICATES THAT INDIVIDUALS FROM A WIDE VARIETY OF AGE,
6 ETHNIC, SOCIOECONOMIC, AND OTHER DEMOGRAPHIC CATEGORIES USE
7 COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES.

8 (B) NOTWITHSTANDING THE WIDESPREAD USE OF COMPLEMENTARY OR
9 ALTERNATIVE HEALTH CARE SERVICES, ACCESS TO COMPLEMENTARY OR
10 ALTERNATIVE HEALTH CARE SERVICES FOR RESIDENTS OF THIS STATE HAS
11 BEEN HAMPERED BY A FAILURE OF THIS STATE TO OPENLY ACKNOWLEDGE THE
12 EXISTENCE OF CERTAIN HEALTH CARE PRACTICES, HEALING THERAPIES AND
13 MODALITIES, AND METHODS THAT COMPRISE COMPLEMENTARY OR ALTERNATIVE
14 HEALTH CARE SERVICES. AS A RESULT, A PROVIDER OF COMPLEMENTARY OR
15 ALTERNATIVE HEALTH CARE SERVICES WHO IS NOT A LICENSED HEALTH CARE
16 PROFESSIONAL MAY BE SUBJECT TO CHARGES OF ENGAGING IN THE PRACTICE
17 OF A HEALTH PROFESSION WITHOUT A LICENSE AND EXPOSED TO FINES,
18 PENALTIES, OR THE RESTRICTION OF HIS OR HER PRACTICE DESPITE THE
19 FACT THAT COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES HAVE
20 NOT BEEN SHOWN TO POSE AN IMMINENT RISK OF SIGNIFICANT AND
21 DISCERNIBLE HARM TO THE PUBLIC'S HEALTH, SAFETY, OR WELFARE.
22 ACCORDINGLY, THE AVAILABILITY OF COMPLEMENTARY OR ALTERNATIVE
23 HEALTH CARE SERVICES HAS BEEN SIGNIFICANTLY, HARMFULLY, AND
24 UNNECESSARILY LIMITED.

25 (C) THAT THE UNREGULATED PRACTICE OF COMPLEMENTARY OR
26 ALTERNATIVE HEALTH CARE SERVICES IS SUITABLE AND DESIRABLE UNDER
27 CERTAIN CIRCUMSTANCES FOR THE PUBLIC'S HEALTH, SAFETY, AND WELFARE

1 AND THAT BARRIERS TO THE PUBLIC'S ACCESS TO THE PERFORMANCE AND
2 DELIVERY OF COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES
3 SHOULD BE REMOVED AND ACCESS ENHANCED.

4 SEC. 9403. (1) AS USED IN THIS PART:

5 (A) "COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES" MEANS
6 THE BROAD DOMAIN OF HEALTH CARE PRACTICES, HEALING THERAPIES AND
7 MODALITIES, AND METHODS THAT ARE NOT PROHIBITED BY SECTION 9405(1)
8 AND THAT MAY BE PROVIDED BY AN INDIVIDUAL WHO IS NOT A LICENSED
9 HEALTH CARE PROFESSIONAL.

10 (B) "DEVICE" MEANS THAT TERM AS DEFINED IN SECTION 17703.

11 (C) "LICENSED HEALTH CARE PROFESSIONAL" MEANS AN INDIVIDUAL
12 WHO IS LICENSED, REGISTERED, OR OTHERWISE AUTHORIZED TO ENGAGE IN
13 THE PRACTICE OF A HEALTH PROFESSION UNDER ARTICLE 15. LICENSED
14 HEALTH CARE PROFESSIONAL DOES NOT INCLUDE A SANITARIAN OR A
15 VETERINARIAN.

16 (D) "PRESCRIPTION" AND "PRESCRIPTION DRUG" MEAN THOSE TERMS AS
17 DEFINED IN SECTION 17708.

18 (2) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
19 PRINCIPLES OF CONSTRUCTION APPLICABLE TO ALL ARTICLES IN THIS ACT.

20 SEC. 9405. (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
21 INDIVIDUAL OTHER THAN A LICENSED HEALTH CARE PROFESSIONAL WHO
22 PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES AS
23 AUTHORIZED UNDER THIS PART IS NOT ENGAGED IN THE UNLAWFUL PRACTICE
24 OF A HEALTH PROFESSION OR OTHERWISE IN VIOLATION OF THIS ACT UNLESS
25 HE OR SHE DOES ANY OF THE FOLLOWING:

26 (A) PERFORMS SURGERY OR ANY OTHER PROCEDURE THAT HARMFULLY
27 PUNCTURES THE SKIN.

1 (B) PRESCRIBES OR ADMINISTERS ANY PROCEDURE INVOLVING IONIZING
2 RADIATION.

3 (C) PRESCRIBES, DISPENSES, ADMINISTERS, OR RECOMMENDS THE
4 DISCONTINUANCE OF A PRESCRIPTION DRUG OR A DEVICE THAT IS SALABLE
5 BY PRESCRIPTION ONLY.

6 (D) PERFORMS A CHIROPRACTIC ADJUSTMENT OF THE ARTICULATIONS OF
7 THE JOINTS OR SPINE.

8 (E) WILLFULLY PROVIDES A DIAGNOSIS OR TREATMENT OF A PHYSICAL
9 OR MENTAL HEALTH CONDITION OF AN INDIVIDUAL THAT DIRECTLY POSES TO
10 THE INDIVIDUAL DIAGNOSED OR TREATED A SIGNIFICANT RISK OF BODILY
11 INJURY, SIGNIFICANT PHYSICAL OR MENTAL ILLNESS, OR DEATH.

12 (F) HOLDS OUT, REPRESENTS, STATES, INDICATES, ADVERTISES, OR
13 OTHERWISE IMPLIES TO ANY PERSON THAT HE OR SHE IS A LICENSED HEALTH
14 CARE PROFESSIONAL.

15 (2) AN INDIVIDUAL OTHER THAN A LICENSED HEALTH CARE
16 PROFESSIONAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALTH CARE
17 SERVICES SHALL DO ALL OF THE FOLLOWING:

18 (A) PRIOR TO PROVIDING COMPLEMENTARY OR ALTERNATIVE HEALTH
19 CARE SERVICES, DISCLOSE TO THE RECIPIENT OF THE SERVICES IN A
20 PLAINLY WORDED WRITTEN STATEMENT THE FOLLOWING INFORMATION:

21 (i) THE NATURE OF THE SERVICES TO BE PROVIDED.

22 (ii) THE DEGREES, TRAINING, EXPERIENCE, CREDENTIALS, OR OTHER
23 QUALIFICATIONS OF THE INDIVIDUAL WITH REGARD TO THE SERVICES TO BE
24 PROVIDED.

25 (iii) A STATEMENT, PRINTED CLEARLY IN NOT LESS THAN 11-POINT
26 TYPE AS FOLLOWS:

27 "I AM NOT LICENSED, REGISTERED, OR OTHERWISE AUTHORIZED BY THE

1 STATE OF MICHIGAN TO ENGAGE IN THE PRACTICE OF A HEALTH
2 PROFESSION AS A LICENSED HEALTH CARE PROFESSIONAL. MICHIGAN
3 HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS FOR
4 UNLICENSED INDIVIDUALS WHO PROVIDE COMPLEMENTARY OR
5 ALTERNATIVE HEALTH CARE SERVICES. THIS STATEMENT OF
6 CREDENTIALS IS FOR INFORMATIONAL PURPOSES ONLY."

7 (B) OBTAIN A WRITTEN ACKNOWLEDGMENT FROM THE RECIPIENT OF THE
8 SERVICES STATING THAT HE OR SHE HAS BEEN PROVIDED WITH THE
9 INFORMATION DESCRIBED UNDER THIS SUBSECTION AND PROVIDE THE
10 RECIPIENT WITH A COPY OF THE WRITTEN ACKNOWLEDGMENT.

11 SEC. 9407. (1) IN ADDITION TO ANY OTHER REMEDY OR PENALTY
12 PROVIDED UNDER THIS ACT, THE DEPARTMENT MAY ISSUE AND CAUSE TO BE
13 SERVED ON AN INDIVIDUAL WHO VIOLATES SECTION 9405(1) ANY OF THE
14 FOLLOWING:

15 (A) A COPY OF AN ORDER REQUIRING THE INDIVIDUAL TO CEASE AND
16 DESIST FROM ENGAGING IN THE PROHIBITED ACTIVITY.

17 (B) A COPY OF AN ORDER OF RESTITUTION OR REFUND TO AN
18 AGGRIEVED INDIVIDUAL.

19 (2) IN ADDITION TO ANY OTHER REMEDY OR PENALTY PROVIDED UNDER
20 THIS ACT, AN INDIVIDUAL WHO VIOLATES SECTION 9405(2) IS SUBJECT TO
21 ANY OF THE FOLLOWING, AS APPLICABLE:

22 (A) A FORMAL LEGAL NOTICE AND REQUEST TO COMPLY WITH SECTION
23 9405(2).

24 (B) FOR VIOLATIONS THAT OCCUR AFTER RECEIPT OF A NOTICE AND
25 REQUEST UNDER SUBDIVISION (A), A CIVIL FINE OF NOT MORE THAN
26 \$500.00 PER VIOLATION.

27 SEC. 9409. (1) THIS PART DOES NOT APPLY TO OR CONTROL THE

1 ACTIVITIES OF A LICENSED HEALTH CARE PROFESSIONAL AND DOES NOT
2 CHANGE THE SCOPE OF PRACTICE OR THE STANDARD OF CARE APPLICABLE TO
3 A LICENSED HEALTH CARE PROFESSIONAL WHO PERFORMS COMPLEMENTARY OR
4 ALTERNATIVE HEALTH CARE SERVICES.

5 (2) THIS PART DOES NOT APPLY TO, CONTROL, OR PREVENT THE
6 ACTIVITIES OF ANY HEALTH PRACTITIONER OR INDIVIDUAL WHO IS ALREADY
7 EXEMPT FROM BEING LICENSED AS A HEALTH CARE PROFESSIONAL UNDER
8 ARTICLE 15 OR UNDER ANY OTHER STATE LAW.

9 Enacting section 1. This amendatory act takes effect July 1,
10 2011.