

SENATE BILL No. 164

February 15, 2017, Introduced by Senators PROOS, COLBECK, BOOHER, MARLEAU, NOFS, KNOLLENBERG, PAVLOV, EMMONS and ZORN and referred to the Committee on Oversight.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 20115 and 20165 (MCL 333.20115 and 333.20165), section 20115 as amended by 2012 PA 499 and section 20165 as amended by 2008 PA 39, and by adding section 20116.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 20115. (1) The department may promulgate rules to further
2 define the term "health facility or agency" and the definition of a
3 health facility or agency listed in section 20106 as required to
4 implement this article. The department may define a specific
5 organization as a health facility or agency for the sole purpose of
6 certification authorized under this article. For purpose of
7 certification only, an organization defined in section 20106(5),
8 20108(1), or 20109(4) is considered a health facility or agency.
9 The term "health facility or agency" does not mean a visiting nurse

1 service or home aide service conducted by and for the adherents of
2 a church or religious denomination for the purpose of providing
3 service for those who depend upon spiritual means through prayer
4 alone for healing.

5 (2) The department shall promulgate rules to differentiate a
6 freestanding surgical outpatient facility from a private office of
7 a physician, dentist, podiatrist, or other health professional. The
8 department shall specify in the rules that a facility including,
9 but not limited to, a private practice office described in this
10 subsection must be licensed under this article as a freestanding
11 surgical outpatient facility if that facility performs 120 or more
12 surgical abortions per year and publicly advertises outpatient
13 abortion services. **THE DEPARTMENT SHALL ALSO SPECIFY IN THE RULES**
14 **THAT A FACILITY THAT MUST BE LICENSED AS A FREESTANDING SURGICAL**
15 **OUTPATIENT FACILITY UNDER THIS SUBSECTION SHALL NOT CONTINUE TO**
16 **PERFORM SURGICAL ABORTIONS UNTIL IT OBTAINS A LICENSE FROM THE**
17 **DEPARTMENT. A PERSON THAT VIOLATES THIS SUBSECTION IS SUBJECT TO**
18 **THE FOLLOWING:**

19 (A) FOR A FIRST VIOLATION, A PERSON MAY BE ORDERED TO PAY A
20 CIVIL FINE OF NOT MORE THAN \$545.00. A VIOLATION OF THIS
21 SUBDIVISION MAY BE PROSECUTED BY THE PROSECUTOR OF THE COUNTY IN
22 WHICH THE VIOLATION OCCURRED OR BY THE ATTORNEY GENERAL. A CIVIL
23 FINE THAT IS COLLECTED UNDER THIS SUBDIVISION MUST BE DEPOSITED
24 INTO THE CLINIC INSPECTION FUND CREATED IN SECTION 20116.

25 (B) FOR A SECOND OR SUBSEQUENT VIOLATION, A PERSON IS SUBJECT
26 TO THE SANCTION DESCRIBED IN SECTION 20165(5).

27 (3) The department shall promulgate rules that in effect

1 republish R 325.3826, R 325.3832, R 325.3835, R 325.3857, R
2 325.3866, R 325.3867, and R 325.3868 of the Michigan ~~administrative~~
3 ~~code~~, **ADMINISTRATIVE CODE**, but shall include in the rules standards
4 for a freestanding surgical outpatient facility or private practice
5 office that performs 120 or more surgical abortions per year and
6 that publicly advertises outpatient abortion services. The
7 department shall ~~assure~~ **ENSURE** that the standards are consistent
8 with the most recent United States ~~supreme court~~ **SUPREME COURT**
9 decisions regarding state regulation of abortions.

10 (4) Subject to section 20145 and part 222, the department may
11 modify or waive 1 or more of the rules contained in R 325.3801 to R
12 325.3877 of the Michigan ~~administrative code~~ **ADMINISTRATIVE CODE**
13 regarding construction or equipment standards, or both, for a
14 freestanding surgical outpatient facility that performs 120 or more
15 surgical abortions per year and that publicly advertises outpatient
16 abortion services, if both of the following conditions are met:

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

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

1 (5) By January 15 each year, the department of ~~community~~
2 health **AND HUMAN SERVICES** shall provide the following information
3 to the department: ~~of licensing and regulatory affairs:~~

4 (a) From data received by the department of ~~community~~ health
5 **AND HUMAN SERVICES** through the abortion reporting requirements of
6 section 2835, all of the following:

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

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

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

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

16 (6) As used in this section:

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

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

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

23 **SEC. 20116. (1) THE CLINIC INSPECTION FUND IS CREATED WITHIN**
24 **THE STATE TREASURY.**

25 **(2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM**
26 **ANY SOURCE FOR DEPOSIT INTO THE FUND. THE STATE TREASURER SHALL**
27 **DIRECT THE INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT**

1 TO THE FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

2 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
3 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

4 (4) THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF THE FUND FOR
5 AUDITING PURPOSES.

6 (5) THE DEPARTMENT SHALL EXPEND MONEY FROM THE FUND, UPON
7 APPROPRIATION, ONLY TO CONDUCT INVESTIGATIONS OR INSPECTIONS UNDER
8 SECTION 20156 OF THE PREMISES OF AN APPLICANT THAT IS REQUIRED TO
9 BE LICENSED AS A FREESTANDING SURGICAL OUTPATIENT FACILITY UNDER
10 SECTION 20115(2).

11 (6) AS USED IN THIS SECTION, "FUND" MEANS THE CLINIC
12 INSPECTION FUND CREATED IN SUBSECTION (1).

13 Sec. 20165. (1) Except as otherwise provided in this section,
14 after notice of intent to an applicant or licensee to deny, limit,
15 suspend, or revoke the applicant's or licensee's license or
16 certification and an opportunity for a hearing, the department may
17 deny, limit, suspend, or revoke the license or certification or
18 impose an administrative fine on a licensee if 1 or more of the
19 following exist:

20 (a) Fraud or deceit in obtaining or attempting to obtain a
21 license or certification or in the operation of the licensed health
22 facility or agency.

23 (b) A violation of this article or a rule promulgated under
24 this article.

25 (c) False or misleading advertising.

26 (d) Negligence or failure to exercise due care, including
27 negligent supervision of employees and subordinates.

1 (e) Permitting a license or certificate to be used by an
2 unauthorized health facility or agency.

3 (f) Evidence of abuse regarding a patient's health, welfare,
4 or safety or the denial of a patient's rights.

5 (g) Failure to comply with section 10115.

6 (h) Failure to comply with part 222 or a term, condition, or
7 stipulation of a certificate of need issued under part 222, or
8 both.

9 (i) A violation of section 20197(1).

10 **(J) A VIOLATION OF SECTION 20115(2) (B) .**

11 (2) The department may deny an application for a license or
12 certification based on a finding of a condition or practice that
13 would constitute a violation of this article if the applicant were
14 a licensee.

15 (3) Denial, suspension, or revocation of an individual
16 emergency medical services personnel license under part 209 is
17 governed by section 20958.

18 (4) If the department determines under subsection (1) that a
19 health facility or agency has violated section 20197(1), the
20 department shall impose an administrative fine of \$5,000,000.00 on
21 the health facility or agency.

22 **(5) IF THE DEPARTMENT DETERMINES UNDER SUBSECTION (1) THAT A**
23 **PERSON HAS VIOLATED SECTION 20115(2) (B) , THE DEPARTMENT SHALL DENY**
24 **THE PERSON'S APPLICATION FOR A LICENSE .**

25 Enacting section 1. This amendatory act takes effect 90 days
26 after the date it is enacted into law.