

Michigan

Notes: Introduced in 2006 and died in 2006. According to Michigan Health Freedom experts, this bill is currently being re-drafted. Generally Follows the California model.

HOUSE BILL No. 5918

March 29, 2006, Introduced by Rep. Mortimer 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 and section 16279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 94. CONSUMER HEALTH FREEDOM

SEC. 9401. (1) THIS PART SHALL BE KNOWN AND MAY BE CITED AS THE "MICHIGAN HEALTH FREEDOM ACT".

(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 NATIONAL INSTITUTES OF MEDICINE AND A STUDY PUBLISHED BY THE NEW ENGLAND JOURNAL OF MEDICINE, IT IS WIDELY RECOGNIZED THAT THOUSANDS OF INDIVIDUALS IN THIS STATE ARE PRESENTLY RECEIVING A SUBSTANTIAL AMOUNT OF HEALTH CARE FROM PROVIDERS OF COMPLEMENTARY

OR ALTERNATIVE HEALTH CARE SERVICES WHO ARE NOT LICENSED OR REGISTERED BY THE STATE. THOSE STUDIES FURTHER INDICATE THAT COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES ARE USED BY INDIVIDUALS FROM A WIDE VARIETY OF AGE, ETHNIC, SOCIOECONOMIC, AND OTHER DEMOGRAPHIC CATEGORIES.

(B) NOTWITHSTANDING THE WIDESPREAD USE OF COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES, ACCESS TO THESE SERVICES FOR RESIDENTS OF THIS STATE HAS BEEN HAMPERED BY A FAILURE OF THIS STATE TO OPENLY ACKNOWLEDGE THE EXISTENCE OF CERTAIN HEALTH CARE PRACTICES, HEALING THERAPIES AND MODALITIES, AND METHODS THAT ARE NOT SUITABLE FOR REGULATION OR LICENSURE UNDER THIS CODE. AS A RESULT, THE PROVIDERS OF THESE SERVICES WHO ARE NOT LICENSED OR REGISTERED BY THIS STATE AS HEALTH CARE PROFESSIONALS MAY BE SUBJECT TO CHARGES OF ENGAGING IN THE PRACTICE OF A HEALTH PROFESSION WITHOUT A LICENSE AND EXPOSED TO FINES, PENALTIES, OR THE RESTRICTION OF THEIR PRACTICE DESPITE THE FACT THAT THESE SERVICES HAVE NOT BEEN SHOWN TO POSE AN IMMINENT RISK OF SIGNIFICANT AND DISCERNIBLE HARM TO THE PUBLIC'S HEALTH, SAFETY, OR WELFARE. ACCORDINGLY, THE AVAILABILITY OF THE COMPLEMENTARY OR ALTERNATIVE HEALING SERVICES HAS BEEN SIGNIFICANTLY, HARMFULLY, AND UNNECESSARILY LIMITED BY POTENTIALLY SUBJECTING THE UNLICENSED PROVIDERS OF THOSE SERVICES TO FINES, PENALTIES, AND RESTRICTION OF THEIR PRACTICE.

(C) THAT THE UNREGULATED PRACTICE OF COMPLEMENTARY OR

ALTERNATIVE HEALTH CARE SERVICES IS SUITABLE AND DESIRABLE UNDER CERTAIN CIRCUMSTANCES FOR THE PUBLIC'S HEALTH AND WELFARE AND THAT BARRIERS TO THE PUBLIC'S ACCESS TO THE PERFORMANCE AND DELIVERY OF THOSE COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES SHALL BE REMOVED AND ACCESS ENHANCED.

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

(A) "COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES" MEANS, SUBJECT TO SECTION 9405(1), A BROAD DOMAIN OF HEALTH CARE PRACTICES AND SERVICES, INCLUDING METHODS, MODALITIES, TREATMENTS, PROCEDURES, OR PROTOCOLS THAT HAVE NOT BEEN GENERALLY ADOPTED BY A LICENSED HEALTH CARE PROFESSION, ARE NOT GENERALLY CONSIDERED BY THAT PROFESSION TO BE WITHIN THE CURRENT ACCEPTABLE STANDARDS OF CARE, OR ARE NOT STANDARD PRACTICES OF A PROFESSION IN A PARTICULAR COMMUNITY, AND THAT DO NOT POSE A GREATER RISK OF DIRECT PHYSICAL OR EMOTIONAL HARM TO A CLIENT WHEN USED AS DIRECTED THAN THAT OF CONVENTIONAL PREDOMINANTLY USED TREATMENT PERFORMED UNDER A PREVAILING AND ACCEPTED STANDARD OF CARE OF THAT LICENSED HEALTH PROFESSION.

(B) "LICENSED HEALTH CARE PROFESSIONAL" MEANS AN INDIVIDUAL LICENSED OR REGISTERED, OR OTHERWISE AUTHORIZED, UNDER ARTICLE 15 TO ENGAGE IN THE PRACTICE OF HIS OR HER HEALTH PROFESSION. LICENSED HEALTH CARE PROFESSIONAL DOES NOT INCLUDE A SANITARIAN OR A VETERINARIAN.

(C) "PRESCRIPTION DRUG" MEANS THAT TERM AS DEFINED UNDER SECTION 17708.

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

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

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

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

(C) PRESCRIBES, DISPENSES, ADMINISTERS, OR RECOMMENDS THE DISCONTINUANCE OF A PRESCRIPTION DRUG OR DEVICE.

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

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

(F) HOLDS OUT, STATES, INDICATES, ADVERTISES, OR OTHERWISE IMPLIES TO ANY PERSON THAT HE OR SHE IS A LICENSED HEALTH CARE

PROFESSIONAL.

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

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

(i) THE NATURE OF THE SERVICES TO BE PROVIDED AND THE THEORY ON WHICH THE SERVICES ARE BASED.

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

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

"I AM NOT LICENSED OR REGISTERED BY THE STATE OF MICHIGAN AS A LICENSED HEALTH CARE PROFESSIONAL. MICHIGAN HAS NOT ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS FOR UNLICENSED INDIVIDUALS WHO PROVIDE COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES. THIS STATEMENT OF CREDENTIALS IS FOR INFORMATIONAL PURPOSES ONLY."

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

SEC. 9407. (1) AN INDIVIDUAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES AND ENGAGES IN ANY OF THE

ACTIVITIES PROSCRIBED UNDER SECTION 9405(1) IS GUILTY OF A FELONY AS DESCRIBED UNDER SECTION 16294 AND REQUIRED TO MAKE RESTITUTION.

(2) AN INDIVIDUAL WHO PROVIDES COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES AND FAILS TO COMPLY WITH SECTION 9405(2) MAY BE SUBJECT TO AN ADMINISTRATIVE OR CIVIL FINE TO BE PAID TO THE DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$500.00 FOR EACH VIOLATION.

SEC. 9409. NOTHING IN THIS PART SHALL BE CONSTRUED TO AFFECT THE SCOPE OF PRACTICE OR THE STANDARD OF CARE APPLICABLE TO LICENSED HEALTH CARE PROFESSIONALS IN THE PERFORMANCE OF COMPLEMENTARY OR ALTERNATIVE HEALTH CARE SERVICES.

SEC. 16279. (1) A LICENSEE OR REGISTRANT WHO OFFERS TO PROVIDE A PATIENT WITH A COMPLEMENTARY OR ALTERNATIVE HEALTH SERVICE SHALL DO ALL OF THE FOLLOWING:

(A) INFORM THE PATIENT OF THE NATURE OF THE SERVICE OR SERVICES, ALONG WITH THE THEORY ON WHICH THOSE SERVICES ARE BASED, AND EXPLAIN THE BENEFITS AND RISKS ASSOCIATED WITH SUCH SERVICES.

(B) INFORM THE PATIENT OF HIS OR HER DEGREES, TRAINING, EXPERIENCE, CREDENTIALS, OR OTHER QUALIFICATIONS WITH REGARD TO THE SERVICES BEING OFFERED.

(C) OBTAIN A WRITTEN ACKNOWLEDGMENT FROM THE PATIENT STATING THAT HE OR SHE HAS BEEN PROVIDED WITH THE INFORMATION DESCRIBED UNDER THIS SUBSECTION AND PROVIDE THE PATIENT WITH A COPY OF THIS WRITTEN ACKNOWLEDGMENT.

(2) NOTHING IN THIS SECTION MODIFIES OR CHANGES THE SCOPE OF

PRACTICE OR THE STANDARD OF CARE FOR ANY PREVAILING OR CONVENTIONAL
TREATMENT METHODS USED THAT ARE APPLICABLE TO A LICENSEE OR
REGISTRANT.

(3) AS USED IN THIS SECTION, "COMPLEMENTARY OR ALTERNATIVE
HEALTH CARE SERVICE" MEANS THAT TERM AS DEFINED UNDER SECTION 9403.

Enacting section 1. This amendatory act takes effect July 1,
2006.