

Act No. 30
Public Acts of 1990
Approved by the Governor
March 13, 1990
Filed with the Secretary of State
March 13, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Profit, Bartnik, Gagliardi, Bennane, Hood, Murphy, Rocca, Gubow, Martin, Hunter, Honigman, Pridnia, Richard A. Young, Kilpatrick, Palamara, DeMars, Munsell, Law, Hoffman, Clack, Dolan, Stabenow, Berman, Runco and Kosteva

ENROLLED HOUSE BILL No. 4081

AN ACT to amend sections 7333, 7521, 7522, 7523, 7524, and 17766 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," section 7333 as amended by Act No. 143 of the Public Acts of 1989, section 7521 as amended by Act No. 139 of the Public Acts of 1988, section 7522 as amended by Act No. 251 of the Public Acts of 1982, and sections 7523 and 7524 as amended by Act No. 7 of the Public Acts of 1988, being sections 333.7333, 333.7521, 333.7522, 333.7523, 333.7524, and 333.17766 of the Michigan Compiled Laws; and to add sections 17766a and 17766b.

The People of the State of Michigan enact:

Section 1. Sections 7333, 7521, 7522, 7523, 7524, and 17766 of Act No. 368 of the Public Acts of 1978, section 7333 as amended by Act No. 143 of the Public Acts of 1989, section 7521 as amended by Act No. 139 of the Public Acts of 1988, section 7522 as amended by Act No. 251 of the Public Acts of 1982, and sections 7523 and 7524 as amended by Act No. 7 of the Public Acts of 1988, being sections 333.7333, 333.7521, 333.7522, 333.7523, 333.7524, and 333.17766 of the Michigan Compiled Laws, are amended and sections 17766a and 17766b are added to read as follows:

Sec. 7333. (1) Except as otherwise provided in this section, a controlled substance included in schedule 2 or an androgenic anabolic steroid as defined in section 17766a shall not be dispensed without the written prescription of a practitioner licensed under section 7303 on an official prescription form.

(2) In an emergency situation, as defined by rule of the administrator, a controlled substance included in schedule 2 or an androgenic anabolic steroid may be dispensed upon oral prescription of a practitioner, if the prescribing practitioner promptly fills out an official prescription form and forwards the first and second copies of the official prescription form to the dispensing pharmacy within 72 hours after the oral prescription is issued, in compliance with section 7334(6). A prescription for a controlled substance included in schedule 2 or an androgenic anabolic steroid shall not be refilled. A prescription for a controlled substance included in schedule 2 or an androgenic anabolic steroid shall not be filled more than 3 days after the date on which the prescription was issued.

(3) The following are not required to be on an official prescription form:

(a) A controlled substance included in schedule 2 or an androgenic anabolic steroid that is ordered for and administered to a patient in a hospital licensed by the department of public health or the department of mental health.

(b) A controlled substance included in schedule 2 or an androgenic anabolic steroid that is ordered for and administered to a patient on the premises of a licensed health facility or agency other than a hospital or in the private practice office of a licensed physician, dentist, or podiatrist.

(c) A controlled substance included in schedule 2 or an androgenic anabolic steroid that is administered to an animal by a licensed veterinarian in a veterinarian's office, animal clinic, animal hospital, zoo, or on the premises of the animal's domicile, and a commercially prepared, premixed solution of sodium pentobarbital administered to an animal for the purpose of euthanasia.

(d) A prescription issued by a practitioner residing adjacent to the land border between this state and an adjoining state who is authorized under the laws of that state to practice a health profession and whose practice may extend into this state, but who does not maintain an office or designate a place to meet patients or receive calls in this state.

(4) Except if dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, a controlled substance included in schedule 3 or 4 that is a prescription drug as determined under section 503(b) of the federal food, drug, and cosmetic act, chapter 675, 52 Stat. 1040, 21 U.S.C. 353 or section 17708, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled without specific refill instructions noted by the prescriber. The prescription shall not be filled or refilled later than 6 months after the date of the prescription or be refilled more than 5 times, unless renewed by the practitioner in accordance with rules promulgated by the administrator.

(5) A controlled substance included in schedule 5 shall not be distributed or dispensed other than for a medical purpose, nor in any manner except in accordance with rules promulgated by the administrator.

(6) If a written prescription is required under this section, the written prescription shall contain the quantity of the controlled substance or androgenic anabolic steroid prescribed in both written and numerical terms. A written prescription shall be in compliance with this subsection if, in addition to containing the quantity of the controlled substance or androgenic anabolic steroid prescribed in written terms, it contains preprinted numbers, representative of the quantity of the controlled substance or an androgenic anabolic steroid prescribed, next to which is a box or line which may be checked by the prescriber.

(7) A prescribing practitioner shall not use a prescription form for a purpose other than prescribing. A prescribing practitioner shall not postdate an official prescription form. A prescribing practitioner shall not sign an official prescription form on a day other than the day on which the prescription is issued.

(8) Notwithstanding subsections (1) to (7), a dog pound or animal shelter licensed or registered by the department of agriculture pursuant to Act No. 287 of the Public Acts of 1969, being sections 287.331 to 287.340 of the Michigan Compiled Laws, may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the dog pound or animal shelter does all of the following:

(a) Applies to the administrator for a permit in accordance with rules promulgated under this part. The application shall contain the name of the individual in charge of the day to day operations of the dog pound or animal shelter and the name of the individual responsible for designating employees who will be practicing euthanasia on animals pursuant to this act.

(b) Complies with the rules promulgated by the administrator for the storage, handling, and use of commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on animals. A record of use shall be maintained and shall be available for inspection.

(c) Certifies that an employee of the dog pound or animal shelter has received, and can document completion of, a minimum of 8 hours of training given by a licensed veterinarian in the use of sodium pentobarbital to practice euthanasia on animals pursuant to rules promulgated by the administrator in consultation with the board of veterinary medicine as these rules relate to this training, and that only an individual described in this subdivision, or an individual otherwise permitted to use a controlled substance pursuant to this article, will administer the commercially prepared, premixed solution of sodium pentobarbital according to written procedures established by the dog pound or animal shelter.

(9) The application described in subsection (8) shall include the names and addresses of all individuals employed by the dog pound or animal shelter who have been trained as described in subsection (8)(c), and the name of the veterinarian who trained them. The list of names and addresses shall be updated every 6 months.

(10) If a dog pound or animal shelter issued a permit pursuant to subsection (8) does not have in its employ an individual trained as described in subsection (8)(c), the dog pound or animal shelter shall immediately notify the administrator, and shall cease to administer any commercially prepared, premixed solution of sodium pentobarbital until the administrator is notified that 1 of the following has occurred:

(a) An individual trained as described in subsection (8)(c) has been hired by the dog pound or animal shelter.

(b) An employee of the dog pound or animal shelter has been trained as described in subsection (8)(c).

(11) A veterinarian, including a veterinarian who trains individuals as described in subsection (8)(c), shall not be civilly or criminally liable for the use of a commercially prepared, premixed solution of sodium pentobarbital by a dog pound or animal shelter unless the veterinarian is employed by or under contract with the dog pound or animal shelter, and the terms of the veterinarian's employment or the contract require the veterinarian to be responsible for the use or administration of the commercially prepared, premixed solution of sodium pentobarbital.

(12) A person shall not knowingly use or permit the use of a commercially prepared, premixed solution of sodium pentobarbital in violation of this section.

(13) This section shall not be construed to require that a veterinarian be employed by or under contract with a dog pound or animal shelter in order to obtain, possess, or administer a commercially prepared, premixed solution of sodium pentobarbital pursuant to this section.

Sec. 7521. (1) The following property is subject to forfeiture:

(a) A prescription form, official prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, an androgenic anabolic steroid, or a counterfeit androgenic anabolic steroid which has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article or section 17766a.

(b) A raw material, product, or equipment of any kind which is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, an androgenic anabolic steroid, or a counterfeit androgenic anabolic steroid in violation of this article or section 17766a; or a raw material, product, or equipment of any kind which is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

(c) Property which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

(ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article or section 17766a.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, an androgenic anabolic steroid, or a counterfeit androgenic anabolic steroid in violation of this article or section 17766a that is traceable to an exchange for a controlled substance, an

imitation controlled substance, an androgenic anabolic steroid, or a counterfeit androgenic anabolic steroid in violation of this article or section 17766a, or that is used or intended to be used to facilitate any violation of this article or section 17766a including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) shall be presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.

(g) Any other drug paraphernalia not described in subdivision (b) or (c).

(2) As used in this section:

(a) "Androgenic anabolic steroid" means that term as defined in section 17766a.

(b) "Counterfeit androgenic anabolic steroid" means that term as defined in section 17766a.

(c) "Imitation controlled substance" means that term as defined in section 7341.

Sec. 7522. Property that is subject to forfeiture under this article or pursuant to section 7521 may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

(a) Incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.

(b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this article or pursuant to section 17766a.

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this article or section 17766a.

Sec. 7523. (1) If property is seized pursuant to section 7522, forfeiture proceedings shall be instituted promptly. If the property is seized without process as provided under section 7522, and the total value of the property seized does not exceed \$100,000.00, the following procedure shall be used:

(a) The local unit of government that seized the property, or, if the property was seized by the state, the state shall notify the owner of the property that the property has been seized, and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice shall be published in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

(b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or relating to the property, the attorney general of the seizure of the property and the intention to forfeit and dispose of the property.

(c) Any person claiming an interest in property which is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a claim with the local unit of government or the state expressing his or her interest in the property. Upon the filing of the claim, and the giving of a bond to the local unit of government or the state in the amount of \$250.00 with sureties approved by the local unit of government or the state conditioned that if the property is ordered forfeited by the court the obligor shall pay all costs and expenses of the forfeiture proceedings. The local unit of government or, if applicable, the state shall transmit the claim and bond with a list and description of the property seized to the attorney general, the prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. However, unless all criminal proceedings involving or relating to the property have been completed, a city or township attorney shall not institute forfeiture proceedings without the consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(d) If no claim is filed or bond given within the 20-day period as described in subdivision (c), the local unit of government or the state shall declare the property forfeited and shall dispose of the property as provided under section 7524. However, unless all criminal proceedings involving or relating to the property have been completed, the local unit of government or the state shall not dispose of the property pursuant to this subdivision without the written consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(2) Property taken or detained under this article or pursuant to section 17766a shall not be subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article or pursuant to section 17766a, the seizing agency may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(3) Title to real property forfeited under this article or pursuant to section 17766a shall be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

Sec. 7524. (1) When property is forfeited under this article or pursuant to section 17766a, the local unit of government that seized the property may do any of the following, or if the property is seized by or in the custody of the state, the state may do any of the following, subject to section 7523(1)(d):

(a) Retain it for official use.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 7521(1)(f) that are forfeited pursuant to this article shall be applied as follows:

(i) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs.

(ii) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the entity having budgetary authority over the seizing agency. If more than 1 agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the entities having budgetary authority over the seizing agencies. The money received under this subparagraph shall be used to enhance law enforcement efforts pertaining to this article or section 17766a.

(c) Require the administrator to take custody of the property and remove it for disposition in accordance with law.

(d) Forward it to the bureau for disposition.

(2) In the course of selling real property pursuant to subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver shall be entitled to reasonable compensation. The receiver shall have authority to do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

(c) Accept offers to purchase the forfeited real property.

(d) Execute instruments transferring title to the forfeited real property.

Sec. 17766. Except as provided in section 17766a, a person who does any of the following is guilty of a misdemeanor:

(a) Obtains or attempts to obtain a prescription drug by giving a false name to a pharmacist or other authorized seller, prescriber, or dispenser.

(b) Obtains or attempts to obtain a prescription drug by falsely representing that he or she is a lawful prescriber, dispenser, or licensee, or acting on behalf of a lawful prescriber, dispenser, or licensee.

(c) Falsely makes, utters, publishes, passes, alters, or forges a prescription.

(d) Knowingly possesses a false, forged, or altered prescription.

(e) Knowingly attempts to obtain, obtains, or possesses a drug by means of a prescription for other than a legitimate therapeutic purpose, or as a result of a false, forged, or altered prescription.

(f) Possesses or controls for the purpose of resale, or sells, offers to sell, dispenses, or gives away, a drug, pharmaceutical preparation, or chemical that has been dispensed on prescription and has left the control of a pharmacist, or that has been damaged by heat, smoke, fire, water, or other cause and is unfit for human or animal use.

(g) Prepares or permits the preparation of a prescription drug, except as delegated by a pharmacist.

(h) Sells a drug in bulk or in an open package at auction, unless the sale has been approved in accordance with rules of the board.

Sec. 17766a. (1) A person shall not knowingly use an androgenic anabolic steroid except as provided in this act. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$100.00, or both.

(2) A person shall not knowingly possess an androgenic anabolic steroid except pursuant to the lawful prescription of a practitioner. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days or by a fine of not more than \$100.00, or both. A person who commits a second or subsequent violation of this subsection is guilty of a felony, punishable by imprisonment for not more than 4 years or by a fine of not more than \$2,000.00, or both.

(3) A person shall not knowingly deliver an androgenic anabolic steroid to another person except as provided in this act or knowingly possess an androgenic anabolic steroid with the intent to deliver that androgenic anabolic steroid to another person except as provided in this act. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 7 years or by a fine of not more than \$5,000.00, or both.

(4) A person shall not knowingly deliver a counterfeit androgenic anabolic steroid to another person or knowingly possess a counterfeit androgenic anabolic steroid with the intent to deliver that counterfeit androgenic anabolic steroid to another person. A person who violates this subsection is guilty of a felony, punishable by imprisonment for not more than 7 years or by a fine of not more than \$5,000.00, or both. This subsection does not apply to a person who knowingly delivers a counterfeit androgenic anabolic steroid to another person or knowingly possesses a counterfeit androgenic anabolic steroid with the intent to deliver that androgenic anabolic steroid to another person for legitimate and professionally recognized therapeutic or scientific purposes.

(5) It is not necessary for this state to negate any exemption or exception in a complaint, information, indictment, or other pleading or in a trial, hearing, or other proceeding pursuant to this section. The burden of proof of an exemption or exception is upon the person claiming that exemption or exception.

(6) In the absence of proof that a person is the authorized holder of an appropriate license or order form, the person is presumed not to be the holder of the license or order form. The burden of proof is upon the person to rebut the presumption.

(7) A liability is not imposed by this section upon an authorized state, county, or local officer, engaged in the lawful performance of his or her duties.

(8) Property is subject to forfeiture for a violation of this section as provided under sections 7521 to 7524.

(9) As used in this section:

(a) Except as provided in subdivision (b), "androgenic anabolic steroid" includes any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

(i) Dehydrochlormethyltestosterone.

(ii) Ethylestrenol.

(iii) Fluoxymesterone.

(iv) Mesterolone.

(v) Methandienone.

(vi) Methandrostenolone.

(vii) Methenolone.

(viii) Methyltestosterone.

(ix) Nandrolone.

(x) Nandrolone deconoate.

(xi) Norethandrolone.

(xii) Oxandrolone.

(xiii) Oxymesterone.

(xiv) Oxymetholone.

(xv) Stanozolol.

(xvi) Testosterone.

(xvii) Testosterone enanthate.

(xviii) Testosterone propionate.

(xix) Testosterone cypionate.

(b) "Androgenic anabolic steroid" does not include any anabolic steroids which are expressly intended for administration through implants to livestock or other nonhuman species and which are approved by the federal food and drug administration for such use.

(c) "Counterfeit androgenic anabolic steroid" means 1 or more of the following:

(i) An androgenic anabolic steroid that, without authorization, bears a trade name, identifying mark, imprint, or number of a person other than the manufacturer, distributor, or dispenser of that androgenic anabolic steroid.

(ii) An androgenic anabolic steroid that, without authorization, is packaged in a container that bears a trade name, identifying mark, imprint, or number of a person other than the manufacturer, distributor, or dispenser of that androgenic anabolic steroid.

(iii) A substance other than an androgenic anabolic steroid that bears a trade name, identifying mark, imprint, or number that misrepresents the substance as an androgenic anabolic steroid.

(iv) A substance other than an androgenic anabolic steroid that is packaged in a container that bears a trade name, identifying mark, imprint, or number that misrepresents the substance as an androgenic anabolic steroid.

(d) "Deliver" means the actual, constructive, or attempted transfer of an androgenic anabolic steroid or counterfeit androgenic anabolic steroid from 1 person to another, whether or not there is an agency relationship.

Sec. 17766b. (1) A prescription for an androgenic anabolic steroid shall be recorded on an official prescription form as defined in section 7107(2) in the same manner that a prescription for a controlled substance included in schedule 2 is required to be recorded under section 7334.

(2) As used in this section, "androgenic anabolic steroid" means that term as defined in section 17766a.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.