

Act No. 143
Public Act of 1989
July 11, 1989
Filed by the Secretary of State
July 11, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Gire, DeBeaussaert and Ciaramitaro

ENROLLED HOUSE BILL No. 4698

AN ACT to amend sections 7333, 7401, and 7403 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. 240 of the Public Acts of 1988 and sections 7401 and 7403 as amended by Act No. 60 of the Public Acts of 1988, being sections 333.7333, 333.7401, and 333.7403 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 7333, 7401, and 7403 of Act No. 368 of the Public Acts of 1978, section 7333 as amended by Act No. 240 of the Public Acts of 1988 and sections 7401 and 7403 as amended by Act No. 60 of the Public Acts of 1988, being sections 333.7333, 333.7401, and 333.7403 of the Michigan Compiled Laws are amended to read as follows:

Sec. 7333. (1) Except as otherwise provided in this section, a controlled substance included in schedule 2 shall not be dispensed without the written prescription of a practitioner on an official prescription form.

(2) In an emergency situation, as defined by rule of the administrator, a controlled substance included in schedule 2 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 shall not be refilled. A prescription for a controlled substance included in schedule 2 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 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 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 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 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 prescribed in written terms, it contains preprinted numbers, representative of the quantity of the controlled substance 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. 7401. (1) Except as authorized by this article, a person shall not manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, a prescription form, an official prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 which is either a narcotic drug or described in section 7214(a)(iv) and:

(i) Which is in an amount of 650 grams or more of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for life.

(ii) Which is in an amount of 225 grams or more, but less than 650 grams, of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for not less than 20 years nor more than 30 years.

(iii) Which is in an amount of 50 grams or more, but less than 225 grams, of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for not less than 10 years nor more than 20 years.

(iv) Which is in an amount less than 50 grams, of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 1 year nor more than 20 years, and may be fined not more than \$25,000.00, or placed on probation for life.

(b) Any other controlled substance classified in schedule 1, 2, or 3, except marihuana, is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$5,000.00, or both.

(c) A substance classified in schedule 4 or marihuana, is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$2,000.00, or both.

(d) A substance classified in schedule 5, is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not more than \$2,000.00, or both.

(e) An official prescription form or a counterfeit official prescription form, is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$25,000.00, or both.

(f) A prescription form or a counterfeit prescription form other than an official prescription form or a counterfeit official prescription form, is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$5,000.00, or both.

(3) A term of imprisonment imposed pursuant to subsection (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony. An individual subject to a mandatory term of imprisonment under subsection (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not be eligible for probation, suspension of that sentence, or parole during that mandatory term, except and only to the extent that those provisions permit probation for life, and shall not receive a reduction in that mandatory term of imprisonment by disciplinary credits or any other type of sentence credit reduction.

(4) The court may depart from the minimum term of imprisonment authorized under subsection (2)(a)(ii), (iii), or (iv) if the court finds on the record that there are substantial and compelling reasons to do so.

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance or an official prescription form or a prescription form unless the controlled substance, official prescription form, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

(2) A person who violates this section as to:

(a) A controlled substance classified in schedule 1 or 2 which is either a narcotic drug or described in section 7214(a)(iv), and:

(i) Which is in an amount of 650 grams or more of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for life.

(ii) Which is in an amount of 225 grams or more, but less than 650 grams, of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for not less than 20 years nor more than 30 years.

(iii) Which is in an amount of 50 grams or more, but less than 225 grams, of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for not less than 10 years nor more than 20 years.

(iv) Which is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that controlled substance is guilty of a felony, and shall be imprisoned for not less than 1 year and not more than 4 years, and may be fined not more than \$25,000.00 or placed on probation for life.

(v) Which is in an amount less than 25 grams of any mixture containing that controlled substance is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$25,000.00, or both.

(b) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance classified in schedule 1 for which a penalty is prescribed in subdivision (a), (c), or (d), is guilty of a felony, punishable by imprisonment for not more than 2 years, or a fine of not more than \$2,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

(d) Marihuana, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

(e) An official prescription form, is guilty of a felony, punishable by imprisonment for not more than 1 year, or a fine of not more than \$2,000.00, or both.

(f) A prescription form other than an official prescription form, is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

(3) The court may depart from the minimum term of imprisonment authorized under subsection (2)(ii), (iii), or (iv) if the court finds on the record that there are substantial and compelling reasons to do so.

Section 2. Sections 7401 and 7403 of Act No. 368 of the Public Acts of 1978, as amended by this amendatory act, shall take effect upon the expiration of 90 days after the date of the enactment of this amendatory act.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.