

SENATE BILL No. 789

November 1, 2011, Introduced by Senators JONES, SCHUITMAKER, KAHN, NOFS, CASPERSON, MARLEAU and PAPPAGEORGE and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 2251, 7201, 7202, 7203, and 7204 (MCL
333.2251, 333.7201, 333.7202, 333.7203, and 333.7204), section 7204
as amended by 1994 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2251. (1) Upon a determination that an imminent danger to
2 the health or lives of individuals exists in this state, the
3 director immediately shall inform the individuals affected by the
4 imminent danger and issue an order ~~which~~**THAT** shall be delivered to
5 a person ~~—~~authorized to avoid, correct, or remove the imminent
6 danger or be posted at or near the imminent danger. The order shall
7 incorporate the director's findings and require immediate action

1 necessary to avoid, correct, or remove the imminent danger. The
2 order may specify action to be taken or prohibit the presence of
3 individuals in locations or under conditions where the imminent
4 danger exists, except individuals whose presence is necessary to
5 avoid, correct, or remove the imminent danger.

6 (2) Upon failure of a person to comply promptly with a
7 department order issued under this section, the department may
8 petition the circuit court having jurisdiction to restrain a
9 condition or practice which the director determines causes the
10 imminent danger or to require action to avoid, correct, or remove
11 the imminent danger.

12 (3) If the director determines that conditions anywhere in
13 this state constitute a menace to the public health, the director
14 may take full charge of the administration of **APPLICABLE** state and
15 local health laws, rules, regulations, and ordinances ~~applicable~~
16 ~~thereto.~~ **IN ADDRESSING THAT MENACE.**

17 (4) **IF THE DIRECTOR DETERMINES THAT AN IMMINENT DANGER TO THE**
18 **HEALTH OR LIVES OF INDIVIDUALS IN THIS STATE CAN BE PREVENTED OR**
19 **CONTROLLED BY TEMPORARILY SCHEDULING A SUBSTANCE AS A CONTROLLED**
20 **SUBSTANCE UNDER SECTIONS 7202 AND 7203, THE DIRECTOR SHALL NOTIFY**
21 **THE ADMINISTRATOR OF HIS OR HER DETERMINATION IN WRITING. THE**
22 **NOTIFICATION SHALL INCLUDE A DESCRIPTION OF THE SUBSTANCE TO BE**
23 **CONTROLLED AND THE GROUNDS FOR HIS OR HER DETERMINATION. THE**
24 **DIRECTOR MAY PROVIDE COPIES OF POLICE, HOSPITAL, AND LABORATORY**
25 **REPORTS AND OTHER INFORMATION TO THE ADMINISTRATOR AS CONSIDERED**
26 **APPROPRIATE BY THE DIRECTOR.**

27 (5) ~~(4)~~—As used in this section:

1 (A) "ADMINISTRATOR" MEANS THAT TERM AS DEFINED IN SECTION
2 7103.

3 (B) ~~(a)~~—"Imminent danger" means a condition or practice exists
4 ~~which~~ **THAT** could reasonably be expected to cause death, disease, or
5 serious physical harm immediately or before the imminence of the
6 danger can be eliminated through enforcement procedures otherwise
7 provided.

8 (C) ~~(b)~~—"Person" means a person as defined in section 1106 or
9 a governmental entity.

10 Sec. 7201. The administrator shall administer this article and
11 may add substances to, or delete or reschedule all substances
12 enumerated in the schedules in sections 7212, 7214, 7216, 7218, and
13 7220 ~~pursuant to the procedures of~~ **IN COMPLIANCE WITH** the
14 administrative procedures act of 1969 **OR AS OTHERWISE PROVIDED IN**
15 **SECTIONS 7202 AND 7203.**

16 Sec. 7202. In making a determination regarding a substance,
17 the administrator shall consider all of the following:

18 (a) The actual or relative potential for abuse.

19 (b) The scientific evidence of its pharmacological effect, if
20 known.

21 (c) The state of current scientific knowledge regarding the
22 substance.

23 (d) The history and current pattern of abuse.

24 (e) The scope, duration, and significance of abuse.

25 (f) The risk to the public health.

26 (g) The potential of the substance to produce psychic or
27 physiological dependence liability.

1 (h) Whether the substance is an immediate precursor of a
2 substance already controlled under this article.

3 (I) FOR PURPOSES OF SECTION 7203(2) THROUGH (5) ONLY, WHETHER
4 THE ADMINISTRATOR HAS BEEN NOTIFIED THAT THE SUBSTANCE CONSTITUTES
5 AN IMMINENT DANGER AS DEFINED IN SECTION 2251.

6 Sec. 7203. (1) After considering the factors enumerated in
7 section ~~7202~~, **7202(A) THROUGH (H)**, the administrator shall make
8 findings with respect ~~thereto~~ **TO THOSE FACTORS** and promulgate a
9 rule controlling the substance if the administrator finds the
10 substance has a potential for abuse.

11 (2) IF THE ADMINISTRATOR IS NOTIFIED IN WRITING BY THE
12 DIRECTOR OF THE DEPARTMENT OF COMMUNITY HEALTH UNDER SECTION 2251
13 THAT A SUBSTANCE CONSTITUTES AN IMMINENT DANGER AS DEFINED IN THAT
14 SECTION, THE ADMINISTRATOR MAY PROCEED UNDER THIS SECTION TO
15 DETERMINE WHETHER THE SUBSTANCE SHOULD BE TEMPORARILY SCHEDULED OR
16 RESCHEDULED AS A CONTROLLED SUBSTANCE UNDER THIS ARTICLE. IF THE
17 ADMINISTRATOR DECIDES TO PROCEED UNDER THIS SECTION, THE
18 ADMINISTRATOR SHALL CONDUCT NOT FEWER THAN 1 PUBLIC HEARING ON THE
19 MATTER. THE ADMINISTRATOR SHALL PROVIDE NOT LESS THAN 10 DAYS'
20 NOTICE OF THE HEARING. THE NOTICE SHALL AT MINIMUM SPECIFY THE
21 PURPOSE OF THE HEARING, SHALL STATE THAT THE HEARING IS OPEN TO THE
22 PUBLIC, AND SHALL SPECIFY THE TIME AND PLACE OF THE HEARING. THE
23 ADMINISTRATOR SHALL TRANSMIT THE NOTICE TO THE DEPARTMENT OF
24 LICENSING AND REGULATORY AFFAIRS FOR PLACEMENT IN THE MICHIGAN
25 REGISTER. THE NOTICE IS EFFECTIVE WHEN THE TEXT OF THE NOTICE
26 BECOMES AVAILABLE TO THE PUBLIC ON THE INTERNET AS PROVIDED IN
27 SECTION 203 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL

1 4.1203. FOR PURPOSES OF THIS SUBSECTION ONLY, A QUORUM FOR THE
2 MEETING AND BUSINESS CONDUCTED UNDER THIS SUBSECTION AND SUBSECTION
3 (3) SHALL CONSIST OF A MAJORITY OF THE PROFESSIONAL MEMBERS OF THE
4 BOARD OF PHARMACY. ANY MEMBER OF THE BOARD OF PHARMACY MAY ATTEND
5 THE HEARING BY 2-WAY TELECONFERENCING. EXCEPT AS OTHERWISE PROVIDED
6 IN THIS SUBSECTION, THE ADMINISTRATIVE PROCEDURES ACT OF 1969 AND
7 THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275, DO NOT
8 APPLY TO PROCEDURES UNDER THIS SUBSECTION.

9 (3) THE ADMINISTRATOR MAY TEMPORARILY SCHEDULE OR RESCHEDULE
10 THE SUBSTANCE AS A CONTROLLED SUBSTANCE UNDER THIS ARTICLE FOR A
11 PERIOD NOT TO EXCEED 180 DAYS. THE ADMINISTRATOR MAY EXTEND THE
12 TEMPORARY SCHEDULING OF THE SUBSTANCE AS A CONTROLLED SUBSTANCE
13 UNDER THIS SUBSECTION FOR AN ADDITIONAL PERIOD NOT TO EXCEED 180
14 DAYS. THE PUBLIC NOTICE REQUIREMENTS OF SUBSECTION (2), THE
15 ADMINISTRATIVE PROCEDURES ACT OF 1969, AND THE OPEN MEETINGS ACT,
16 1976 PA 267, MCL 15.261 TO 15.275, DO NOT APPLY TO AN EXTENSION
17 UNDER THIS SUBSECTION.

18 (4) IF THE ADMINISTRATOR DETERMINES UNDER SUBSECTION (3) THAT
19 A SUBSTANCE SHOULD BE TEMPORARILY SCHEDULED OR RESCHEDULED UNDER
20 THIS ARTICLE, THE ADMINISTRATOR SHALL ORDER THE SUBSTANCE TO BE
21 SCHEDULED OR RESCHEDULED ON A TEMPORARY BASIS BY WRITTEN ORDER OF
22 THE ADMINISTRATOR. THE ADMINISTRATOR SHALL TRANSMIT THE ORDER TO
23 THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS FOR PLACEMENT IN
24 THE MICHIGAN REGISTER. THE ORDER IS EFFECTIVE WHEN THE TEXT OF THE
25 ORDER BECOMES AVAILABLE TO THE PUBLIC ON THE INTERNET AS PROVIDED
26 IN SECTION 203 OF THE LEGISLATIVE COUNCIL ACT, 1986 PA 268, MCL
27 4.1203. THE ORDER SHALL EXPIRE AS FOLLOWS:

1 (A) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C), ON THE
2 DATE SPECIFIED IN THE ORDER.

3 (B) UPON THE EXPIRATION OF 180 DAYS AFTER THE ORDER IS SIGNED
4 BY THE ADMINISTRATOR.

5 (C) WHEN THE SUBSTANCE SPECIFIED IN THE ORDER IS OTHERWISE
6 SCHEDULED OR RESCHEDULED UNDER THIS ARTICLE OR DESIGNATED AS A
7 DRUG, INCLUDING A CONTROLLED SUBSTANCE, AS OTHERWISE PROVIDED BY
8 LAW.

9 (5) AN EXTENSION OF AN ORDER UNDER SUBSECTIONS (3) AND (4)
10 BECOMES EFFECTIVE IN THE SAME MANNER AND SUBJECT TO THE SAME
11 CONDITIONS AS AN ORIGINAL ORDER ISSUED UNDER SUBSECTIONS (3) AND
12 (4), EXCEPT THAT THE REQUIREMENTS FOR A PUBLIC HEARING DO NOT
13 APPLY.

14 (6) ~~(2)~~—If the administrator designates a substance as an
15 immediate precursor, a substance ~~which~~**THAT** is a precursor of the
16 controlled precursor is not subject to control solely because it is
17 a precursor of the controlled precursor.

18 Sec. 7204. If a substance is designated, rescheduled, or
19 deleted as a controlled substance under federal law and notice of
20 that designation, rescheduling, or deletion is given to the
21 administrator, **THE SUBSTANCE SHALL BE SIMILARLY SCHEDULED UNDER**
22 **SECTION 7201 UNLESS** the administrator ~~shall hold~~**HOLDS** a board
23 meeting within the expiration of 91 days after notice is received
24 to determine whether the substance should be similarly controlled
25 ~~pursuant to~~**UNDER** section 7201. If the administrator decides not to
26 similarly control the substance, the administrator shall, within 91
27 days after that decision is made, publish the reasons for that

1 determination.