

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5326**

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7109, 7321, 7333a, 7422, 17708, 17757, and
18813 (MCL 333.7109, 333.7321, 333.7333a, 333.7422, 333.17708,
333.17757, and 333.18813), section 7109 as amended by 2001 PA 233,
section 7321 as amended by 1988 PA 245, section 7333a as amended by
2012 PA 44, section 7422 as added by 2014 PA 313, section 17708 as
amended by 2016 PA 49, section 17757 as amended by 2014 PA 525, and
section 18813 as added by 2016 PA 47, and by adding section 17744e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7109. (1) "Person" means a person as defined in section
2 1106 or a governmental entity.
3 (2) "Poppy straw" means all parts, except the seeds, of the
4 opium poppy, after mowing.

(3) "Practitioner" means **ANY OF THE FOLLOWING:**

(a) A prescriber or pharmacist, a scientific investigator as defined by rule of the administrator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, including an individual in charge of a dog pound or animal shelter licensed or registered by the department of agriculture ~~pursuant to~~ **AND RURAL DEVELOPMENT UNDER** 1969 PA 287, MCL 287.331 to 287.340, or a class B dealer licensed by the United States ~~department of~~ ~~agriculture pursuant to~~ **DEPARTMENT OF AGRICULTURE UNDER** the animal welfare act, Public Law 89-544, 7 ~~U.S.C.~~ **USC** 2131 to 2147, 2149, and 2151 to 2159 and the department of agriculture ~~pursuant to~~ **AND RURAL DEVELOPMENT UNDER** 1969 PA 224, MCL 287.381 to 287.395, for the limited purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to practice euthanasia on animals.

(b) A pharmacy, hospital, or other institution or place of professional practice licensed, registered, or otherwise permitted to distribute, prescribe, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

(4) "Prescriber" means that term as defined in section 17708.

(5) "Prescription form" means a printed form, that is authorized and intended for use by a prescribing practitioner to prescribe controlled substances or other prescription drugs and that meets the requirements of rules promulgated by the

1 administrator, and all of the following requirements:

2 (a) Bears the preprinted, stamped, typed, or manually printed
3 name, address, and telephone number or pager number of the
4 prescribing practitioner.

5 (b) Includes the manually printed name of the patient, the
6 address of the patient, the prescribing practitioner's signature,
7 and the prescribing practitioner's drug enforcement administration
8 registration number.

9 (c) ~~The~~**INCLUDES THE** quantity of the prescription drug
10 prescribed, in both written and numerical terms.

11 (d) Includes the date the prescription drug was prescribed.

12 (e) ~~Any~~**COMPLIES WITH ANY** rules promulgated by the department
13 ~~pursuant to~~**UNDER** section ~~7333a(7)~~**7333A(6)**.

14 (6) "Production" means the manufacture, planting, cultivation,
15 growing, or harvesting of a controlled substance.

16 (7) "Sign" means to affix one's signature manually to a
17 document or to use an electronic signature.

18 (8) "Ultimate user" means an individual who lawfully possesses
19 a controlled substance for personal use or for the use of a member
20 of the individual's household, or for administering to an animal
21 owned by the individual or by a member of the individual's
22 household.

23 Sec. 7321. (1) Subject to subsection (2), a person licensed to
24 manufacture, distribute, prescribe, or dispense controlled
25 substances under this article shall keep records and maintain
26 inventories in conformance with the record-keeping and inventory
27 requirements of federal law and with any additional rules the

1 administrator promulgates, unless exempted by those rules.

2 (2) Beginning May 1, 1989, and annually thereafter, each
3 person licensed under this article to manufacture, distribute,
4 prescribe, or dispense controlled substances shall inventory ~~and~~
5 ~~report to the administrator~~ all schedule 2 to 5 controlled
6 substances possessed by the person at the time of the inventory.

7 ~~The~~ **A PERSON DESCRIBED IN THIS SUBSECTION MAY CONDUCT THE** annual
8 ~~report~~ **INVENTORY** required under this subsection ~~may be conducted~~
9 ~~and submitted to the administrator~~ not more than 30 days before May
10 1, but shall ~~be conducted and submitted to the administrator~~
11 **CONDUCT THE INVENTORY** not later than 60 days after May 1. A person
12 ~~who violates this subsection may be punished by a civil fine of not~~
13 ~~more than \$25,000.00 in a proceeding in the circuit court.~~ **DESCRIBED**
14 **IN THIS SUBSECTION SHALL RETAIN THE INVENTORY REQUIRED UNDER THIS**
15 **SUBSECTION FOR NOT LESS THAN 2 YEARS AFTER THE DATE OF THE**
16 **INVENTORY'S CREATION AND SHALL MAKE THE INVENTORY AVAILABLE FOR**
17 **INSPECTION BY THE DEPARTMENT AT THE REQUEST OF THE DEPARTMENT.**

18 Sec. 7333a. (1) The department shall establish, by rule, an
19 electronic system for monitoring schedule 2, 3, 4, and 5 controlled
20 substances dispensed in this state by veterinarians, and by
21 pharmacists and dispensing prescribers licensed under part 177 or
22 dispensed to an address in this state by a pharmacy licensed in
23 this state. The rules ~~shall~~ **MUST** provide an appropriate electronic
24 format for the reporting of data including, but not limited to,
25 patient identifiers, **AND** the name of the controlled substance
26 dispensed, **THE** date of dispensing, **THE** quantity dispensed, **THE**
27 prescriber, and **THE** dispenser. The department shall require a

1 veterinarian, pharmacist, or dispensing prescriber to utilize the
2 electronic data transmittal process developed by the department or
3 the department's contractor. ~~A-**THE DEPARTMENT SHALL NOT REQUIRE A**~~
4 veterinarian, pharmacist, or dispensing prescriber ~~shall not be~~
5 ~~required~~ to pay a new fee dedicated to the operation of the
6 electronic monitoring system ~~and shall not~~ **OR TO** incur any
7 additional costs solely related to the transmission of data to the
8 department. The rules promulgated under this subsection ~~shall~~ **MUST**
9 exempt both of the following circumstances from the reporting
10 requirements:

11 (a) The administration of a controlled substance directly to a
12 patient.

13 (b) The dispensing from a health facility or agency licensed
14 under article 17 of a controlled substance by a dispensing
15 prescriber in a quantity adequate to treat a patient for not more
16 than 48 hours.

17 (2) Notwithstanding any practitioner-patient privilege, the
18 director of the department may provide data obtained under this
19 section to all of the following:

20 (a) A designated representative of a board responsible for the
21 licensure, regulation, or discipline of a practitioner, pharmacist,
22 or other person ~~who~~ **THAT** is authorized to prescribe, administer, or
23 dispense controlled substances.

24 (b) An employee or agent of the department.

25 (c) A state, federal, or municipal employee or agent whose
26 duty is to enforce the laws of this state or the United States
27 relating to drugs.

(d) A state-operated ~~medicaid~~ **MEDICAID** program.

(e) A state, federal, or municipal employee who is the holder of a search warrant or subpoena properly issued for the records.

(f) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(g) An individual with whom the department has contracted under subsection ~~(8)~~ **(7)**.

(h) A practitioner or other person ~~who~~ **THAT** is authorized to prescribe controlled substances for the purpose of determining if prescriptions written by that practitioner or other person have been dispensed.

(i) ~~Until December 31, 2016, the~~ **THE** health care payment or benefit provider for the purposes of ensuring patient safety and investigating fraud and abuse.

(3) Except as otherwise provided in this part, **A PERSON SHALL USE** information submitted under this section ~~shall be used only for~~ bona fide drug-related criminal investigatory or evidentiary purposes or for the investigatory or evidentiary purposes in connection with the functions of a disciplinary subcommittee or 1 or more of the licensing or registration boards created in article 15.

(4) A person ~~who~~ **THAT** receives data or any report under subsection (2) containing any patient identifiers of the system from the department shall not provide it to any other person ~~or~~ ~~entity~~ except by order of a court of competent jurisdiction.

(5) Except as otherwise provided in this subsection, reporting under subsection (1) is mandatory for a veterinarian, pharmacist, and dispensing prescriber. However, the department may issue a written waiver of the electronic reporting requirement to a veterinarian, pharmacist, or dispensing prescriber who establishes grounds that he or she is unable to use the electronic monitoring system. The department shall require the applicant for the waiver to report the required information in a manner approved by the department.

~~———— (6) In addition to the information required to be reported annually under section 7112(3), the controlled substances advisory commission shall include in the report information on the implementation and effectiveness of the electronic monitoring system.~~

(6) ~~(7)~~—The department, in consultation with ~~the controlled substances advisory commission,~~ the Michigan board of pharmacy, the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, the Michigan **DEPARTMENT OF** state police, and appropriate medical professional associations, shall examine the need for and may promulgate rules for the production of a prescription form on paper that minimizes the potential for forgery. The rules ~~shall~~ **MUST** not include any requirement that sequential numbers, bar codes, or symbols be affixed, printed, or written on a prescription form or that the prescription form be a state produced prescription form. In examining the need for rules for the production of a prescription form on paper that minimizes the potential for forgery, the department shall consider and

1 identify the following:

2 (a) Cost, benefits, and barriers.

3 (b) Overall cost-benefit analysis.

4 (c) Compatibility with the electronic monitoring system
5 required under this section.

6 (7) ~~(8)~~—The department may enter into 1 or more contractual
7 agreements for the administration of this section.

8 (8) ~~(9)~~—The department, all law enforcement officers, all
9 officers of the court, and all regulatory agencies and officers, in
10 using the data for investigative or prosecution purposes, shall
11 consider the nature of the prescriber's and dispenser's practice
12 and the condition for which the patient is being treated.

13 (9) ~~(10)~~—The data and any report containing any patient
14 identifiers obtained from the data are not public records and are
15 not subject to the freedom of information act, 1976 PA 442, MCL
16 15.231 to 15.246.

17 (10) ~~(11) Beginning February 1, 2013 and through February 1,~~
18 ~~2016, the~~ **THE** department may issue a written request to a health
19 care payment or benefit provider to determine if the provider has
20 accessed the electronic **MONITORING** system as provided in subsection
21 (2)(i) in the previous calendar year and, if so, to determine the
22 number of inquiries the provider made in the previous calendar year
23 and any other information the department requests in relation to
24 the provider's access to the electronic **MONITORING** system. A health
25 care payment or benefit provider shall respond to the written
26 request on or before the March 31 following the request. The
27 department shall collaborate with health care payment or benefit

1 providers to develop a reasonable request and reporting form for
2 use under this subsection.

3 **(11)** ~~(12)~~—As used in this section:

4 (a) "Department" means the department of licensing and
5 regulatory affairs.

6 (b) "Health care payment or benefit provider" means a person
7 that provides health benefits, coverage, or insurance in this
8 state, including a health insurance company, a nonprofit health
9 care corporation, a health maintenance organization, a multiple
10 employer welfare arrangement, a ~~medicaid~~ **MEDICAID** contracted health
11 plan, or any other person providing a plan of health benefits,
12 coverage, or insurance subject to state insurance regulation.

13 Sec. 7422. A person that complies with section 17744b **OR**
14 **17744E** is not in violation of this article with regard to the
15 prescribing, dispensing, possessing, or administering an opioid
16 antagonist as authorized in ~~that section.~~ **EITHER OF THOSE SECTIONS.**

17 Sec. 17708. (1) "Preceptor" means a pharmacist approved by the
18 board to direct the training of an intern in an approved pharmacy.

19 (2) "Prescriber" means a licensed dentist, a licensed doctor
20 of medicine, a licensed doctor of osteopathic medicine and surgery,
21 a licensed doctor of podiatric medicine and surgery, a licensed
22 optometrist certified under part 174 to administer and prescribe
23 therapeutic pharmaceutical agents, a licensed veterinarian, or
24 another licensed health professional acting under the delegation
25 and using, recording, or otherwise indicating the name of the
26 delegating licensed doctor of medicine or licensed doctor of
27 osteopathic medicine and surgery.

(3) "Prescription" means an order by a prescriber to fill, compound, or dispense a drug or device written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication. An order transmitted in other than written or hard-copy form must be electronically recorded, printed, or written and immediately dated by the pharmacist, and that record ~~constitutes~~ **IS CONSIDERED** the original prescription. In a health facility or agency licensed under article 17 or other medical institution, an order for a drug or device in the patient's chart ~~constitutes~~ **IS CONSIDERED** for the purposes of this definition the original prescription. **FOR PURPOSES OF THIS PART, PRESCRIPTION ALSO INCLUDES A STANDING ORDER ISSUED UNDER SECTION 17744E.** Subject to section 17751(2) and (5), prescription includes, but is not limited to, an order for a drug, not including a controlled substance ~~as defined in section 7104~~ except under circumstances described in section 17763(e), written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber **WHO IS** licensed to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine in another state.

(4) "Prescription drug" means a drug to which 1 or more of the following apply:

(a) The drug is dispensed pursuant to a prescription.

(b) The drug bears the federal legend "CAUTION: federal law prohibits dispensing without prescription" or "Rx only".

1 (c) The drug is designated by the board as a drug that may
2 only be dispensed pursuant to a prescription.

3 SEC. 17744E. (1) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO
4 THE CONTRARY, THE CHIEF MEDICAL EXECUTIVE IN THE OFFICE OF CHIEF
5 MEDICAL EXECUTIVE CREATED WITHIN THE DEPARTMENT OF HEALTH AND HUMAN
6 SERVICES MAY ISSUE A STANDING ORDER THAT DOES NOT IDENTIFY
7 PARTICULAR PATIENTS AT THE TIME IT IS ISSUED FOR THE PURPOSE OF A
8 PHARMACIST DISPENSING OPIOID ANTAGONISTS TO INDIVIDUALS UNDER THIS
9 SECTION.

10 (2) NOTWITHSTANDING ANY PROVISION OF THIS ACT TO THE CONTRARY,
11 A PHARMACIST MAY DISPENSE AN OPIOID ANTAGONIST TO ANY INDIVIDUAL
12 PURSUANT TO A STANDING ORDER ISSUED BY THE CHIEF MEDICAL EXECUTIVE
13 UNDER SUBSECTION (1) AND THE RULES PROMULGATED UNDER THIS SECTION.

14 (3) THE CHIEF MEDICAL EXECUTIVE WHO ISSUES A STANDING ORDER
15 FOR AN OPIOID ANTAGONIST UNDER THIS SECTION OR A PHARMACIST WHO
16 DISPENSES AN OPIOID ANTAGONIST AS AUTHORIZED UNDER THIS SECTION IS
17 NOT LIABLE IN A CIVIL ACTION FOR DAMAGES RESULTING FROM THE
18 DISPENSING OF THE OPIOID ANTAGONIST OR THE ADMINISTRATION OF OR
19 FAILURE TO ADMINISTER THE OPIOID ANTAGONIST.

20 (4) THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF
21 HEALTH AND HUMAN SERVICES AND LOCAL HEALTH DEPARTMENTS, SHALL
22 PROMULGATE RULES REGARDING DISPENSING, TRAINING, AND REFERRAL TO
23 IMPLEMENT THIS SECTION.

24 Sec. 17757. (1) Upon a request made in person or by telephone,
25 a pharmacist engaged in the business of selling drugs at retail
26 shall provide the current selling price of a drug dispensed by that
27 pharmacy or comparative current selling prices of generic and brand

1 name drugs dispensed by that pharmacy. The information ~~shall~~**MUST**
2 be provided to the person making the request before a drug is
3 dispensed to the person. A person ~~who~~**THAT** makes a request for
4 price information under this subsection is not obligated to
5 purchase the drug for which the price or comparative prices are
6 requested.

7 (2) A pharmacist engaged in the business of selling drugs at
8 retail shall conspicuously display the notice described in
9 subsection (3) at each counter over which prescription drugs are
10 dispensed.

11 (3) The notice required under subsection (2) ~~shall~~**MUST** be in
12 substantially the following form:

13 NOTICE TO CONSUMERS
14 ABOUT PRESCRIPTION DRUGS

15 Under Michigan law, you have the right to find out the price
16 of a prescription drug before the pharmacist fills the
17 prescription. You are under no obligation to have the prescription
18 filled here and may use this price information to shop around at
19 other pharmacies. You may request price information in person or by
20 telephone.

21 Every pharmacy has the current selling prices of both generic
22 and brand name drugs dispensed by the pharmacy.

23 Ask your pharmacist if a lower-cost generic drug is available
24 to fill your prescription. A generic drug contains the same
25 medicine as a brand name drug and is a suitable substitute in most
26 instances.

1 A generic drug may not be dispensed by your pharmacist if your
2 doctor has written "dispense as written" or the initials "d.a.w."
3 on the prescription.

4 If you have questions about the drugs that have been
5 prescribed for you, ask your doctor or pharmacist for more
6 information.

7 To avoid dangerous drug interactions, let your doctor and
8 pharmacist know about any other medications you are taking. This is
9 especially important if you have more than 1 doctor or have
10 prescriptions filled at more than 1 pharmacy.

11 (4) The notice required under subsection (2) ~~shall~~**MUST** also
12 contain the address and phone number of the board and the
13 department. The text of the notice ~~shall~~**MUST** be in at least 32-
14 point bold type and ~~shall~~**MUST** be printed on paper at least 11
15 inches by 17 inches in size. The notice may be printed on multiple
16 pages.

17 (5) The department shall provide a copy of the notice required
18 under subsection (2) to each licensee. The department shall provide
19 additional copies if needed. A person may duplicate or reproduce
20 the notice if the duplication or reproduction is a true copy of the
21 notice as produced by the department, without any additions or
22 deletions.

23 (6) The pharmacist shall furnish to the purchaser of a
24 prescription drug at the time the drug is delivered to the
25 purchaser a receipt evidencing the transactions that contains all
26 of the following:

27 (a) The brand name of the drug, if applicable.

1 (b) The name of the manufacturer or the supplier of the drug,
2 if the drug does not have a brand name.

3 (c) The strength of the drug, if significant.

4 (d) The quantity dispensed, if applicable.

5 (e) The name and address of the pharmacy.

6 (f) The serial number of the prescription **OR A REFERENCE TO**
7 **THE STANDING ORDER ISSUED UNDER SECTION 17744E.**

8 (g) The date the prescription was originally dispensed.

9 (h) The name of the prescriber or, if prescribed under the
10 prescriber's delegatory authority, the name of the delegatee.

11 (i) Except as otherwise authorized under section 5110, 17744a,
12 ~~or~~ 17744b, **OR 17744E**, the name of the patient for whom the drug was
13 prescribed.

14 (j) The price for which the drug was sold to the purchaser.

15 (7) The items required under subsection (6)(a), (b), and (c)
16 may be omitted from a receipt by a pharmacist only if the omission
17 is expressly required by the prescriber. The pharmacist shall
18 retain a copy of each receipt furnished under subsection (6) for 90
19 days. The inclusion of the items required under subsection (6) on
20 the prescription container label is a valid receipt to the
21 purchaser. Including the items required under subsection (6) on the
22 written prescription form and retaining the form constitutes
23 retention of a copy of the receipt.

24 (8) The **DEPARTMENT, IN CONSULTATION WITH THE** board, may
25 promulgate rules to implement this section.

26 Sec. 18813. (1) ~~A~~**BEGINNING JANUARY 1, 2020, A** licensee
27 seeking renewal of a veterinarian's license shall, if requested,

1 furnish the department with satisfactory evidence that during the 3
2 years immediately preceding application for renewal, he or she
3 attended at least 45 hours of continuing education courses or
4 programs approved by the board.

5 (2) ~~A~~**BEGINNING JANUARY 1, 2020, A** licensee seeking renewal of
6 a veterinary technician's license shall, if requested, furnish the
7 department with satisfactory evidence that during the 3 years
8 immediately preceding application for renewal, he or she attended
9 at least 15 hours of continuing education courses or programs
10 approved by the board.

11 (3) The license cycle for a veterinarian's license and a
12 veterinary technician's license is 3 years.

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