

SENATE BILL No. 802

January 31, 2018, Introduced by Senators ZORN, NOFS, MARLEAU and HERTEL and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7333, 7405, and 17763 (MCL 333.7333, 333.7405,
and 333.17763), section 7333 as amended by 2017 PA 251 and sections
7405 and 17763 as amended by 2016 PA 49, and by adding section
7333c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333. (1) As used in this section, "good faith" means the
2 prescribing or dispensing of a controlled substance by a
3 practitioner licensed under section 7303 in the regular course of
4 professional treatment to or for an individual who is under
5 treatment by the practitioner for a pathology or condition other

1 than that individual's physical or psychological dependence upon or
2 addiction to a controlled substance, except as provided in this
3 article. Application of good faith to a pharmacist means the
4 dispensing of a controlled substance pursuant to a prescriber's
5 order which, in the professional judgment of the pharmacist, is
6 lawful. The pharmacist shall be guided by nationally accepted
7 professional standards including, but not limited to, all of the
8 following, in making the judgment:

9 (a) Lack of consistency in the doctor-patient relationship.

10 (b) Frequency of prescriptions for the same drug by 1
11 prescriber for larger numbers of patients.

12 (c) Quantities beyond those normally prescribed for the same
13 drug.

14 (d) Unusual dosages.

15 (e) Unusual geographic distances between patient, pharmacist,
16 and prescriber.

17 (2) Except as otherwise provided in this section **AND SECTION**
18 **7333C**, a practitioner, in good faith, may dispense a controlled
19 substance included in schedule 2 upon receipt of a prescription of
20 a practitioner licensed under section 7303 on a prescription form.
21 A practitioner may issue more than 1 prescription for a controlled
22 substance included in schedule 2 on a single prescription form.

23 (3) ~~In~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 7333C**, IN an
24 emergency situation, as described in R 338.3165 of the Michigan
25 Administrative Code, a controlled substance included in schedule 2
26 may be dispensed upon the oral prescription of a practitioner if
27 the prescribing practitioner promptly fills out a prescription form

1 and forwards the prescription form to the dispensing pharmacy
2 within 7 days after the oral prescription is issued. A prescription
3 for a controlled substance included in schedule 2 must not be
4 filled more than 90 days after the date on which the prescription
5 was issued. A pharmacist, consistent with federal law and
6 regulations on the partial filling of a controlled substance
7 included in schedule 2, may partially fill in increments a
8 prescription for a controlled substance included in schedule 2.

9 (4) A—**EXCEPT AS OTHERWISE PROVIDED IN SECTION 7333C, A**
10 practitioner, in good faith, may dispense a controlled substance
11 included in schedule 3, 4, or 5 that is a prescription drug as
12 determined under section 503(b) of the federal food, drug, and
13 cosmetic act, 21 USC 353, or section 17708, upon receipt of a
14 prescription on a prescription form or an oral prescription of a
15 practitioner. A prescription for a controlled substance included in
16 schedule 3 or 4 must not be filled or refilled without specific
17 refill instructions noted by the prescriber. A prescription for a
18 controlled substance included in schedule 3 or 4 must not be filled
19 or refilled later than 6 months after the date of the prescription
20 or be refilled more than 5 times, unless renewed by the prescriber
21 in accordance with rules promulgated by the administrator.

22 (5) A controlled substance included in schedule 5 must not be
23 distributed or dispensed other than for a medical purpose, or in
24 any manner except in accordance with rules promulgated by the
25 administrator.

26 (6) If a prescription is required under this section, the
27 prescription must contain the quantity of the controlled substance

1 prescribed in both written and numerical terms. A prescription is
2 in compliance with this subsection if, in addition to containing
3 the quantity of the controlled substance prescribed in written
4 terms, it contains preprinted numbers representative of the
5 quantity of the controlled substance prescribed next to which is a
6 box or line the prescriber may check.

7 (7) A prescribing practitioner shall not use a prescription
8 form for a purpose other than prescribing. A prescribing
9 practitioner shall not postdate a prescription form that contains a
10 prescription for a controlled substance. ~~A-EXCEPT AS OTHERWISE~~
11 **PROVIDED IN SECTION 7333C, A** prescriber may transmit a prescription
12 by facsimile of a printed prescription form and by electronic
13 transmission of a printed prescription form, if not prohibited by
14 federal law. ~~If,--EXCEPT AS OTHERWISE PROVIDED IN SECTION 7333C, IF,~~
15 with the patient's consent, a prescription is electronically
16 transmitted, it must be transmitted directly to a pharmacy of the
17 patient's choice by the prescriber or the prescriber's authorized
18 agent, and the data must not be altered, modified, or extracted in
19 the transmission process.

20 (8) Notwithstanding subsections (1) to (5), an animal control
21 shelter or animal protection shelter registered with the department
22 of agriculture and rural development pursuant to 1969 PA 287, MCL
23 287.331 to 287.340, or a class B dealer may acquire a limited
24 permit only for the purpose of buying, possessing, and
25 administering a commercially prepared, premixed solution of sodium
26 pentobarbital to practice euthanasia on injured, sick, homeless, or
27 unwanted domestic pets and other animals, if the animal control

1 shelter or animal protection shelter or class B dealer does all of
2 the following:

3 (a) Applies to the administrator for a permit in accordance
4 with rules promulgated under this part. The application must
5 contain the name of the individual in charge of the day-to-day
6 operations of the animal control shelter or animal protection
7 shelter or class B dealer's facilities and the name of the
8 individual responsible for designating employees who will be
9 practicing euthanasia on animals pursuant to this act.

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

15 (c) Certifies that an employee of the animal control shelter
16 or animal protection shelter or class B dealer has received, and
17 can document completion of, a minimum of 8 hours of training given
18 by a licensed veterinarian in the use of sodium pentobarbital to
19 practice euthanasia on animals pursuant to rules promulgated by the
20 administrator, in consultation with the Michigan board of
21 veterinary medicine as these rules relate to this training, and
22 that only an individual described in this subdivision or an
23 individual otherwise permitted to use a controlled substance
24 pursuant to this article will administer the commercially prepared,
25 premixed solution of sodium pentobarbital according to written
26 procedures established by the animal control shelter or animal
27 protection shelter or class B dealer.

1 (9) The application described in subsection (8) must include
2 the names and addresses of all individuals employed by the animal
3 control shelter or animal protection shelter or class B dealer who
4 have been trained as described in subsection (8)(c) and the name of
5 the veterinarian who trained them. The list of names and addresses
6 must be updated every 6 months.

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

15 (a) An individual trained as described in subsection (8)(c)
16 has been hired by the animal control shelter or animal protection
17 shelter or class B dealer.

18 (b) An employee of the animal control shelter or animal
19 protection shelter or class B dealer has been trained as described
20 in subsection (8)(c).

21 (11) A veterinarian, including a veterinarian who trains
22 individuals as described in subsection (8)(c), is not civilly or
23 criminally liable for the use of a commercially prepared, premixed
24 solution of sodium pentobarbital by an animal control shelter or
25 animal protection shelter or class B dealer unless the veterinarian
26 is employed by or under contract with the animal control shelter or
27 animal protection shelter or class B dealer and the terms of the

1 veterinarian's employment or the contract require the veterinarian
2 to be responsible for the use or administration of the commercially
3 prepared, premixed solution of sodium pentobarbital.

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

7 (13) This section does not require that a veterinarian be
8 employed by or under contract with an animal control shelter or
9 animal protection shelter or class B dealer to obtain, possess, or
10 administer a commercially prepared, premixed solution of sodium
11 pentobarbital pursuant to this section.

12 (14) Notwithstanding subsections (1) to (5), an animal control
13 shelter registered with the department of agriculture and rural
14 development pursuant to 1969 PA 287, MCL 287.331 to 287.340, may
15 acquire a limited permit only for the purpose of buying,
16 possessing, and administering a commercially prepared solution of
17 an animal tranquilizer to sedate a feral, wild, difficult to
18 handle, or other animal for euthanasia, or to tranquilize an animal
19 running at large that is dangerous or difficult to capture, if the
20 animal control shelter does all of the following:

21 (a) Applies to the administrator for a permit in accordance
22 with the rules promulgated under this part. The application must
23 contain the name of the individual in charge of the day-to-day
24 operations of the animal control shelter and the name of the
25 individual responsible for designating employees who will be
26 administering an animal tranquilizer pursuant to this act.

27 (b) Complies with the rules promulgated by the administrator

1 for the storage, handling, and use of a commercially prepared
2 solution of an animal tranquilizer. A record of use must be
3 maintained and must be available for inspection by the department
4 of agriculture and rural development.

5 (c) Certifies that an employee of the animal control shelter
6 has received, and can document completion of, a minimum of 16 hours
7 of training, including at least 3 hours of practical training, in
8 the use of animal tranquilizers on animals from a training program
9 approved by the state veterinarian, in consultation with the
10 Michigan board of veterinary medicine, and given by a licensed
11 veterinarian pursuant to rules promulgated by the administrator, in
12 consultation with the Michigan board of veterinary medicine as
13 these rules relate to this training, and that only an individual
14 described in this subdivision or an individual otherwise permitted
15 to use a controlled substance pursuant to this article will
16 administer the commercially prepared solution of an animal
17 tranquilizer according to written procedures established by the
18 animal control shelter.

19 (15) Notwithstanding subsections (1) to (5), an animal
20 protection shelter registered with the department of agriculture
21 and rural development pursuant to 1969 PA 287, MCL 287.331 to
22 287.340, may acquire a limited permit only for the purpose of
23 buying, possessing, and administering a commercially prepared
24 solution of an animal tranquilizer to sedate a feral, wild,
25 difficult to handle, or other animal for euthanasia, if the animal
26 protection shelter does all of the following:

27 (a) Applies to the administrator for a permit in accordance

1 with the rules promulgated under this part. The application must
2 contain the name of the individual in charge of the day-to-day
3 operations of the animal protection shelter and the name of the
4 individual responsible for designating employees who will be
5 administering an animal tranquilizer pursuant to this act.

6 (b) Complies with the rules promulgated by the administrator
7 for the storage, handling, and use of a commercially prepared
8 solution of an animal tranquilizer. A record of use must be
9 maintained and must be available for inspection by the department
10 of agriculture and rural development.

11 (c) Certifies that an employee of the animal protection
12 shelter has received, and can document completion of, a minimum of
13 16 hours of training, including at least 3 hours of practical
14 training, in the use of animal tranquilizers on animals from a
15 training program approved by the state veterinarian, in
16 consultation with the Michigan board of veterinary medicine, and
17 given by a licensed veterinarian pursuant to rules promulgated by
18 the administrator, in consultation with the Michigan board of
19 veterinary medicine as these rules relate to this training, and
20 that only an individual described in this subdivision or an
21 individual otherwise permitted to use a controlled substance
22 pursuant to this article will administer the commercially prepared
23 solution of an animal tranquilizer according to written procedures
24 established by the animal protection shelter.

25 (16) The application described in subsection (14) or (15) must
26 include the names and business addresses of all individuals
27 employed by the animal control shelter or animal protection shelter

1 who have been trained as described in subsection (14)(c) or (15)(c)
2 and must include documented proof of the training. The list of
3 names and business addresses must be updated every 6 months.

4 (17) If an animal control shelter or animal protection shelter
5 issued a permit pursuant to subsection (14) or (15) does not have
6 in its employ an individual trained as described in subsection
7 (14)(c) or (15)(c), the animal control shelter or animal protection
8 shelter shall immediately notify the administrator and shall cease
9 to administer any commercially prepared solution of an animal
10 tranquilizer until the administrator is notified that 1 of the
11 following has occurred:

12 (a) An individual trained as described in subsection (14)(c)
13 or (15)(c) has been hired by the animal control shelter or animal
14 protection shelter.

15 (b) An employee of the animal control shelter or animal
16 protection shelter has been trained as described in subsection
17 (14)(c) or (15)(c).

18 (18) A veterinarian, including a veterinarian who trains
19 individuals as described in subsection (14)(c) or (15)(c), is not
20 civilly or criminally liable for the use of an animal tranquilizer
21 by an animal control shelter or animal protection shelter unless
22 the veterinarian is employed by or under contract with the animal
23 control shelter or animal protection shelter and the terms of the
24 veterinarian's employment or the contract require the veterinarian
25 to be responsible for the use or administration of the commercially
26 prepared solution of an animal tranquilizer.

27 (19) A person shall not knowingly use or permit the use of an

1 animal tranquilizer in violation of this section.

2 (20) This section does not require that a veterinarian be
3 employed by or under contract with an animal control shelter or
4 animal protection shelter to obtain, possess, or administer a
5 commercially prepared solution of an animal tranquilizer pursuant
6 to this section.

7 (21) As used in this section:

8 (a) "Animal tranquilizer" means xylazine hydrochloride or
9 other animal tranquilizing drug as approved by the United States
10 Food and Drug Administration and by the state department of
11 agriculture and rural development for use as described in this
12 section.

13 (b) "Class B dealer" means a class B dealer licensed by the
14 United States Department of Agriculture pursuant to the animal
15 welfare act, 7 USC 2131 to 2159 and the department of agriculture
16 and rural development pursuant to 1969 PA 224, MCL 287.381 to
17 287.395.

18 **SEC. 7333C. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
19 **BEGINNING JANUARY 1, 2020, A PRESCRIPTION FOR A CONTROLLED**
20 **SUBSTANCE THAT IS AN OPIOID OR A BENZODIAZEPINE MUST BE TRANSMITTED**
21 **ELECTRONICALLY TO A PHARMACY IN A MANNER THAT COMPLIES WITH SECTION**
22 **17754. AN ELECTRONICALLY TRANSMITTED PRESCRIPTION MUST INCLUDE THE**
23 **INFORMATION DESCRIBED IN SECTION 17754 AND MUST BE TRANSMITTED**
24 **DIRECTLY TO A PHARMACY OF THE PATIENT'S CHOICE BY THE PRESCRIBER OR**
25 **THE PRESCRIBER'S AUTHORIZED AGENT.**

26 (2) IF A PRESCRIBER CANNOT MEET THE REQUIREMENTS OF SUBSECTION
27 (1), THE PRESCRIBER MAY APPLY TO THE DEPARTMENT OF HEALTH AND HUMAN

1 SERVICES FOR A WAIVER. THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
2 SHALL GRANT THE PRESCRIBER A WAIVER IF THE PRESCRIBER DOES NOT HAVE
3 THE ELECTRONIC EQUIPMENT OR SYSTEM THAT MEETS THE REQUIREMENTS OF
4 SECTION 17754 FOR TRANSMITTING A PRESCRIPTION ELECTRONICALLY.

5 (3) AS USED IN THIS SECTION, "ELECTRONICALLY TRANSMITTED
6 PRESCRIPTION" MEANS THAT TERM AS DEFINED IN SECTION 17703.

7 Sec. 7405. (1) A person shall not do any of the following:

8 (a) If the person is licensed by the administrator under this
9 article, distribute, prescribe, or dispense a controlled substance
10 in violation of section 7333 **OR 7333C**.

11 (b) If the person is a licensee, manufacture a controlled
12 substance not authorized by his or her license or distribute,
13 prescribe, or dispense a controlled substance not authorized by his
14 or her license to another licensee or other authorized person,
15 except as authorized by rules promulgated by the administrator.

16 (c) Refuse an entry into any premises for an inspection
17 authorized by this article.

18 (d) Knowingly keep or maintain a store, shop, warehouse,
19 dwelling, building, vehicle, boat, aircraft, or other structure or
20 place that is frequented by persons using controlled substances in
21 violation of this article for the purpose of using controlled
22 substances or that is used for keeping or selling controlled
23 substances in violation of this article.

24 (e) If the person is a practitioner, **SUBJECT TO THIS**
25 **SUBDIVISION**, dispense a controlled substance under a prescription
26 written and signed; written or created in an electronic format,
27 signed, and transmitted by facsimile; or transmitted electronically

1 or by other means of communication by a physician prescriber,
2 dentist prescriber, or veterinarian prescriber licensed to practice
3 in another state, unless the prescription is issued by a physician
4 prescriber, dentist prescriber, or veterinarian prescriber who is
5 authorized under the laws of that state to practice dentistry,
6 medicine, osteopathic medicine and surgery, or veterinary medicine
7 and to prescribe controlled substances. **IF THE PRESCRIPTION IS FOR**
8 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7333C, THE PRACTITIONER**
9 **SHALL NOT DISPENSE THE CONTROLLED SUBSTANCE UNLESS THE PRESCRIPTION**
10 **ALSO COMPLIES WITH, AND IS TRANSMITTED TO THE PRACTITIONER IN THE**
11 **MANNER REQUIRED BY, SECTION 7333C.**

12 (2) A person who violates subsection (1) is subject to the
13 penalties prescribed in section 7406.

14 Sec. 17763. In addition to the grounds set forth in part 161,
15 the disciplinary subcommittee may fine, reprimand, or place a
16 pharmacist licensee on probation, or deny, limit, suspend, or
17 revoke the license of a pharmacist or order restitution or
18 community service for a violation or abetting in a violation of
19 this part or rules promulgated under this part, or for 1 or more of
20 the following grounds:

21 (a) Permitting the dispensing of prescriptions by an
22 individual who is not a pharmacist, pharmacist intern, or
23 dispensing prescriber.

24 (b) Permitting the dispensing of prescriptions by a pharmacist
25 intern, except in the presence and under the personal charge of a
26 pharmacist.

27 (c) Selling at auction drugs in bulk or in open packages

1 unless the sale has been approved in accordance with rules of the
2 board.

3 (d) Promoting a prescription drug to the public in any manner.

4 (e) In addition to the prohibition contained in section
5 7405(1)(e), **SUBJECT TO THIS SUBDIVISION**, dispensing a prescription
6 for a controlled substance ~~as defined in section 7104~~ that is
7 written and signed; written or created in an electronic format,
8 signed, and transmitted by facsimile; or transmitted electronically
9 or by other means of communication by a physician prescriber,
10 dentist prescriber, or veterinarian prescriber in another state,
11 unless the prescription is issued by a physician prescriber,
12 dentist prescriber, or veterinarian prescriber who is authorized
13 under the laws of that state to practice dentistry, medicine,
14 osteopathic medicine and surgery, or veterinary medicine and to
15 prescribe controlled substances. **IF THE PRESCRIPTION IS FOR A**
16 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7333C, THE PHARMACIST**
17 **SHALL NOT DISPENSE THE CONTROLLED SUBSTANCE UNLESS THE PRESCRIPTION**
18 **ALSO COMPLIES WITH, AND IS TRANSMITTED TO THE PHARMACIST IN THE**
19 **MANNER REQUIRED BY, SECTION 7333C.**