

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

PART 71
GENERAL PROVISIONS

333.7101 Meanings of words and phrases; general definitions and principles of construction.

Sec. 7101. (1) Except as otherwise provided in section 7341, for purposes of this article, the words and phrases defined in sections 7103 to 7109 have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1984, Act 347, Eff. Mar. 29, 1985.

Compiler's note: For transfer of powers and duties of certain health-related functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

For transfer of powers and duties of the bureau of health services from the department of consumer and industry services to the director of the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Popular name: Act 368

333.7103 Definitions; A.

Sec. 7103. (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by a practitioner, or in the practitioner's presence by his or her authorized agent, or the patient or research subject at the direction and in the presence of the practitioner.

(2) "Administrator" means the Michigan board of pharmacy or its designated or established authority.

(3) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, dispenser, or prescriber. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 60, Eff. Aug. 1, 1989.

Popular name: Act 368

333.7104 Definitions; B to E.

Sec. 7104. (1) "Bona fide prescriber-patient relationship" means a treatment or counseling relationship between a prescriber and a patient in which both of the following are present:

(a) The prescriber has reviewed the patient's relevant medical or clinical records and completed an assessment of the patient's medical history and current medical condition, including a relevant medical evaluation of the patient conducted in person or through telehealth as that term is defined in section 16283.

(b) The prescriber has created and maintained records of the patient's condition in accordance with medically accepted standards.

(2) "Bureau" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.

(3) "Controlled substance" means a drug, substance, or immediate precursor included in schedules 1 to 5 of part 72.

(4) "Controlled substance analogue" means a substance the chemical structure of which is substantially similar to that of a controlled substance in schedule 1 or 2 and that has a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2 or, with respect to a particular individual, that the individual represents or intends to have a narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic, stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2. Controlled substance analogue does not include 1 or more of the following:

(a) A controlled substance.

(b) A substance for which there is an approved new drug application.

(c) A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355, to the extent conduct with respect to the substance is pursuant to the exemption.

(d) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit prescription form" means a printed form that is the same or similar to a prescription form

and that was manufactured, printed, duplicated, forged, electronically transmitted, or altered without the knowledge or permission of a prescriber.

(6) "Counterfeit substance" means a controlled substance that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(7) "Deleterious drug" means a drug, other than a proprietary medicine, likely to be destructive to adult human life in quantities of 3.88 grams or less.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1978, Act 625, Imd. Eff. Jan. 6, 1979;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2001, Act 233, Eff. Jan. 6, 2003;—Am. 2019, Act 42, Imd. Eff. July 8, 2019.

Compiler's note: Enacting section 1 of Act 233 of 2001 provides:

"Enacting section 1. Sections 7104, 7107, and 7109 of the public health code, 1978 PA 368, MCL 333.7104, 333.7107, and 333.7109, as amended by this amendatory act, take effect upon the promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data."

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

333.7105 Additional definitions.

Sec. 7105. (1) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship.

(2) "Disciplinary subcommittee" means the disciplinary subcommittee for the board of pharmacy appointed under section 16216.

(3) "Dispense" means to deliver or issue a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, or compounding necessary to prepare the substance for the delivery or issuance.

(4) "Dispenser" means a practitioner who dispenses.

(5) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(6) "Distributor" means a person who distributes.

(7) "Drug" means a substance recognized as a drug in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals; a substance other than food intended to affect the structure or any function of the body of human beings or animals; or, a substance intended for use as a component of any article specified in this subsection. It does not include a device or its components, parts, or accessories.

(8) "Human consumption" means application, injection, inhalation, or ingestion by a human being.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7106 Definitions; I to M.

Sec. 7106. (1) "Immediate precursor" means a substance that the administrator has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(2) "Industrial hemp" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

(3) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. It includes the packaging or repackaging of the substance or labeling or relabeling of its container, except that it

does not include either of the following:

(a) The preparation or compounding of a controlled substance by an individual for his or her own use.

(b) The preparation, compounding packaging, or labeling of a controlled substance by either of the following:

(i) A practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of his or her professional practice.

(ii) A practitioner, or by the practitioner's authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

(4) "Marihuana" means that term as defined in section 3 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 2014, Act 548, Imd. Eff. Jan. 15, 2015;—Am. 2018, Act 642, Eff. Mar. 28, 2019;—Am. 2021, Act 60, Eff. Oct. 11, 2021.

Popular name: Act 368

333.7107 Definitions; N.

Sec. 7107. "Narcotic drug" means 1 or more of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a), but not including the isoquinoline alkaloids of opium.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 2001, Act 233, Eff. Jan. 6, 2003.

Compiler's note: Enacting section 1 of Act 233 of 2001 provides:

"Enacting section 1. Sections 7104, 7107, and 7109 of the public health code, 1978 PA 368, MCL 333.7104, 333.7107, and 333.7109, as amended by this amendatory act, take effect upon the promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data."

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

333.7108 Definitions; O.

Sec. 7108. (1) "Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 7212, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(2) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7109 Definitions; P to U.

Sec. 7109. (1) "Person" means a person as defined in section 1106 or a governmental entity.

(2) "Poppy straw" means all parts, except the seeds, of the 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 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 under the animal welfare act, Public Law 89-544, 7 USC 2131 to 2147, 2149, and 2151 to 2159 and the department of agriculture 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 administrator, and all of the following requirements:

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

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

(c) Includes the quantity of the prescription drug prescribed, in both written and numerical terms.

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

(e) Complies with any rules promulgated by the department under section 7333a(6).

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

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1980, Act 414, Imd. Eff. Jan. 11, 1981;—Am. 1986, Act 174, Imd. Eff. July 7, 1986;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 2001, Act 233, Eff. Jan. 6, 2003;—Am. 2016, Act 383, Eff. Mar. 28, 2017.

Compiler's note: Section 3 of Act 174 of 1986 provides: "This amendatory act shall only apply to contested cases filed on or after July 1, 1986."

Enacting section 1 of Act 233 of 2001 provides:

"Enacting section 1. Sections 7104, 7107, and 7109 of the public health code, 1978 PA 368, MCL 333.7104, 333.7107, and 333.7109, as amended by this amendatory act, take effect upon the promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data."

The rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, pertaining to the operation of the electronic monitoring system, were promulgated on December 30, 2002. In addition, a written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code is operational was filed with, and received by, the secretary of state on January 6, 2003.

Popular name: Act 368

Administrative rules: R 338.471 et seq. and R 338.3101 et seq. of the Michigan Administrative Code.

333.7111 Controlled substances advisory commission; appointment and qualifications of members; ex officio members; secretary; appointment and qualifications of drug control administrator.

Sec. 7111. (1) The controlled substances advisory commission in the department of commerce shall consist of the following 13 voting members appointed by the governor with the advice and consent of the senate:

(a) One health care professional from each of the following boards created in article 15:

(i) The Michigan board of medicine.

(ii) The Michigan board of osteopathic medicine and surgery.

(iii) The Michigan board of pharmacy.

(iv) The Michigan board of podiatric medicine and surgery.

(v) The Michigan board of dentistry.

(vi) The Michigan board of veterinary medicine.

(vii) The Michigan board of nursing.

(b) One licensed health care professional from the field of psychiatry.

(c) One licensed health care professional from the field of pharmacology.

(d) Three public members, 1 of whom shall serve as chairperson.

(e) One member representing pharmaceutical manufacturers.

(2) The director of the department of state police, director of commerce, director of public health, director of social services, superintendent of public instruction, and the attorney general, or their official designees, and the drug control administrator from within the department of commerce, who shall serve as secretary to the controlled substances advisory commission, are ex officio members without votes, but are not members for determining a quorum. The department of commerce, in consultation with the Michigan board of pharmacy, shall appoint an individual who is a licensed pharmacist to serve as the drug control administrator for purposes of this section.

History: Add. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 1993, Act 138, Imd. Eff. Aug. 2, 1993.

Popular name: Act 368

Compiler's note: For transfer of controlled substances advisory commission to the department of community health by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For renaming department of energy, labor, and economic growth to department of licensing and regulatory affairs, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

333.7112 Controlled substances advisory commission; compensation and expenses; terms; vacancy; meetings; report; recommendations.

Sec. 7112. (1) Members of the controlled substances advisory commission shall receive per diem compensation as established annually by the legislature and shall be reimbursed for expenses incurred pursuant to section 1216.

(2) The members of the controlled substances advisory commission shall serve for terms of 2 years. An individual shall not serve more than 2 terms and a partial term, consecutive or otherwise. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The controlled substances advisory commission shall meet at least once each 3 months and shall report on its activities and make recommendations as described in section 7113 to the administrator, the governor, and the legislature at least annually.

History: Add. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 138, Imd. Eff. Aug. 2, 1993.

Popular name: Act 368

333.7113 Controlled substances advisory commission; monitoring; investigations; plan of action; annual report; establishment and use of standardized data base format; transmission of information.

Sec. 7113. (1) The controlled substances advisory commission shall monitor indicators of controlled substance abuse and diversion. If that data shows that Michigan exceeds the average national per capita consumption of a controlled substance, the controlled substances advisory commission shall investigate and determine if there is a legitimate reason for the excess consumption. If the controlled substances advisory commission determines there is not a legitimate reason for the excess consumption, the controlled substances advisory commission shall recommend to the administrator a plan of action to overcome the problem. The controlled substances advisory commission may also recommend action to the administrator if other indicators show that a special problem is developing with any controlled substance available by prescription.

(2) The controlled substances advisory commission shall publicly issue an annual report to the administrator, the governor, and the legislature on the current status of the abuse and diversion of controlled substances in this state. The report shall also identify existing efforts to overcome the abuse and diversion of controlled substances in this state and make recommendations for needed legislative, administrative, and interagency activities.

(3) The controlled substances advisory commission may include in the report required by subsection (2) recommendations for action that involve licensing, law enforcement, substance abuse treatment and prevention, education, professional associations, pharmaceutical manufacturers, and other relevant individuals and agencies.

(4) By December 31, 1993, the department of commerce, in consultation with the Michigan pharmacists association, shall establish a standardized data base format consistent with the standards of the national council for prescription drug programs that may be used by dispensing pharmacies or a practitioner described in section 7334(2) to transmit the prescription-related information required under section 7334 to the department of commerce electronically or on storage media including, but not limited to, disks, tapes, and cassettes. The controlled substances advisory commission shall approve or revise the standardized data base format within 3 months after the department of commerce establishes the format. Upon commission approval or revision, the department of commerce shall implement transmission of information under the format and prescription-related information required under section 7334 may be transmitted to the department of

commerce electronically or on storage media.

History: Add. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 1993, Act 138, Imd. Eff. Aug. 2, 1993.

Popular name: Act 368

333.7113a Prescription drug and opioid abuse commission; recommendations to department of education.

Sec. 7113a. By July 1, 2018, the prescription drug and opioid abuse commission established by Executive Order No. 2016-15 shall develop or adopt, and make available to the department of education, recommendations for the instruction of pupils on prescription opioid drug abuse. The recommendations required under this section must include, but are not limited to, recommendations for instruction on the prescription drug epidemic and the connection between prescription opioid drug abuse and addiction to other drugs.

History: Add. 2017, Act 254, Eff. Mar. 27, 2018.

Popular name: Act 368

333.7121 Application and construction of article.

Sec. 7121. (1) This article applies to violations of law, seizures and forfeitures, injunctive proceedings, administrative proceedings, and investigations which occur after its effective date.

(2) This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact laws similar to it.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7123 Effect of article on rights and duties, penalties, proceedings, prosecutions, sentencing, civil seizures or forfeitures, injunctive proceedings, and administrative proceedings.

Sec. 7123. (1) Rights and duties which have matured, penalties which have been incurred, proceedings which have been commenced and prosecutions for violations of law occurring before the effective date of this article are not affected or abated by this article. If, before April 1, 1972, an individual committed an offense similar to an offense set forth in part 74 but has not been sentenced as of the effective date of this article, the sentencing judge shall not impose a sentence in excess of the penalty prescribed in part 74 for the similar offense.

(2) Civil seizures or forfeitures and injunctive proceedings commenced before the effective date of this article are not affected by this article.

(3) Administrative proceedings pending under Act No. 196 of the Public Acts of 1971, as amended, being sections 335.301 to 335.367 of the Michigan Compiled Laws, shall be continued and brought to a final determination in accordance with the laws and rules in effect before the effective date of this article.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368

333.7125 Continuation of order or rule.

Sec. 7125. An order or rule promulgated under a law affected by this article and in effect on the effective date of this article and not in conflict with this article shall continue in effect until modified, superseded, or rescinded.

History: 1978, Act 368, Eff. Sept. 30, 1978.

Popular name: Act 368