



HOUSE BILL No. 5137

November 30, 1999, Introduced by Rep. DeWeese and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7104, 7107, 7109, 7333, 7401, 7403, 7407, 7521, 16204b, 16204c, 16204d, and 16315 (MCL 333.7104, 333.7107, 333.7109, 333.7333, 333.7401, 333.7403, 333.7407, 333.7521, 333.16204b, 333.16204c, 333.16204d, and 333.16315), section 7104 as amended by 1994 PA 38, sections 7107, 7109, and 7407 as amended by 1993 PA 80, section 7333 as amended and section 16315 as added by 1993 PA 138, section 7401 as amended by 1998 PA 319, section 7403 as amended by 1996 PA 249, section 7521 as amended by 1990 PA 30, section 16204b as added by 1998 PA 422, and sections 16204c and 16204d as added by 1998 PA 423; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7104. (1) "Bureau" means the drug enforcement
2 administration, United States department of justice, or its
3 successor agency.

4 (2) "Controlled substance" means a drug, substance, or imme-
5 diate precursor included in schedules 1 to 5 of part 72.

6 (3) "Controlled substance analogue" means a substance the
7 chemical structure of which is substantially similar to that of a
8 controlled substance in schedule 1 or 2 ~~and~~ OR that has a nar-
9 cotic, stimulant, depressant, or hallucinogenic effect on the
10 central nervous system substantially similar to or greater than
11 the narcotic, stimulant, depressant, or hallucinogenic effect on
12 the central nervous system of a controlled substance included in
13 schedule 1 or 2 or, with respect to a particular individual, that
14 the individual represents or intends to have a narcotic, stimu-
15 lant, depressant, or hallucinogenic effect on the central nervous
16 system substantially similar to or greater than the narcotic,
17 stimulant, depressant, or hallucinogenic effect on the central
18 nervous system of a controlled substance included in schedule 1
19 or 2. Controlled substance analogue does not include ~~any~~ 1 OR
20 MORE of the following:

21 (a) A controlled substance.

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

24 (c) A substance with respect to which an exemption is in
25 effect for investigational use by a particular person under
26 section 505 of the federal food, drug and cosmetic act,
27 chapter 675, 52 Stat. ~~1040~~ 1052, 21 U.S.C. 355, to the extent

1 conduct with respect to the substance is pursuant to the
2 exemption.

3 (d) Any substance to the extent not intended for human con-
4 sumption before an exemption takes effect with respect to the
5 substance.

6 (4) "Counterfeit prescription form" means a printed form
7 that is the same or similar to a prescription form ~~or an offi-~~
8 ~~cial prescription form,~~ and that was manufactured, printed,
9 duplicated, forged, or altered without the knowledge or permis-
10 sion of a licensed prescribing practitioner. ~~, or, in the case~~
11 ~~of official prescription forms, the department of commerce.~~

12 (5) "Counterfeit substance" means a controlled substance
13 ~~which~~ THAT, or the container or labeling of which, without
14 authorization, bears the trademark, trade name or other identify-
15 ing mark, imprint, number, or device, or any likeness thereof, of
16 a manufacturer, distributor, or dispenser other than the person
17 who in fact manufactured, distributed, or dispensed the
18 substance.

19 (6) "Deleterious drug" means a drug, other than a propri-
20 etary medicine, likely to be destructive to adult human life in
21 quantities of 3.88 grams or less.

22 Sec. 7107. ~~(1)~~ "Narcotic drug" means any of the follow-
23 ing, whether produced directly or indirectly by extraction from
24 substances of vegetable origin, or independently by means of
25 chemical synthesis, or by a combination of extraction and chemi-
26 cal synthesis:

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

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

7 ~~(2) "Official prescription form" means a prescription form~~
8 ~~that meets the requirements of section 7334 and is issued to~~
9 ~~practitioners by the department of commerce.~~

10 Sec. 7109. (1) "Person" means a person as defined in sec-
11 tion 1106 or a governmental entity.

12 (2) "Poppy straw" means all parts, except the seeds, of the
13 opium poppy, after mowing.

14 (3) "Practitioner" means:

15 (a) A prescriber or pharmacist, a scientific investigator as
16 defined by rule of the administrator, or other person licensed,
17 registered, or otherwise permitted to distribute, dispense, con-
18 duct research with respect to, or administer a controlled sub-
19 stance in the course of professional practice or research in this
20 state, including an individual in charge of a dog pound or animal
21 shelter licensed or registered by the department of agriculture
22 pursuant to ~~Act No. 287 of the Public Acts of 1969, being sec-~~
23 ~~tions 287.331 to 287.340 of the Michigan Compiled Laws 1969 PA~~
24 ~~287, MCL 287.331 TO 287.340, or a class B dealer licensed by the~~
25 United States department of agriculture pursuant to the animal
26 welfare act, Public Law 89-544, 7 U.S.C. 2131 to 2147, 2149, and
27 2151 to 2159 and the department of agriculture pursuant to ~~Act~~

1 ~~No. 224 of the Public Acts of 1969, being sections 287.381 to~~
2 ~~287.395 of the Michigan Compiled Laws~~ 1969 PA 224, MCL 287.381
3 TO 287.395, for the limited purpose of buying, possessing, and
4 administering a commercially prepared, premixed solution of
5 sodium pentobarbital to practice euthanasia on animals.

6 (b) A pharmacy, hospital, or other institution or place of
7 professional practice licensed, registered, or otherwise permit-
8 ted to distribute, prescribe, dispense, conduct research with
9 respect to, or administer a controlled substance in the course of
10 professional practice or research in this state.

11 (4) "PRESCRIBER" MEANS THAT TERM AS DEFINED IN SECTION
12 17708.

13 (5) ~~(4)~~ "Prescription form" means a printed form ~~which~~
14 THAT is authorized and intended for use by a prescribing practi-
15 tioner to prescribe controlled substances or prescription drugs
16 and ~~which~~ THAT meets the requirements of rules promulgated by
17 the administrator.

18 (6) ~~(5)~~ "Production" means the manufacture, planting, cul-
19 tivation, growing, or harvesting of a controlled substance.

20 (7) ~~(6)~~ "Ultimate user" means an individual who lawfully
21 possesses a controlled substance for personal use or for the use
22 of a member of the individual's household, or for administering
23 to an animal owned by the individual or by a member of the
24 individual's household.

25 Sec. 7333. (1) Except as otherwise provided in this
26 section, ~~and section 17766b,~~ a controlled substance included in
27 schedule 2 or an androgenic anabolic steroid as defined in

1 section 17766a shall not be dispensed without the written
2 prescription of a practitioner licensed under section 7303 on ~~an~~
3 ~~official~~ A prescription form. A PRACTITIONER SHALL NOT ISSUE
4 MORE THAN 1 PRESCRIPTION FOR A CONTROLLED SUBSTANCE INCLUDED IN
5 SCHEDULE 2 ON A SINGLE PRESCRIPTION FORM. A PRESCRIPTION FOR A
6 CONTROLLED SUBSTANCE INCLUDED IN SCHEDULE 2 SHALL NOT BE
7 REFILLED.

8 (2) In an emergency situation, as defined ~~by rule of the~~
9 ~~administrator~~ IN R 338.3165 OF THE MICHIGAN ADMINISTRATIVE CODE,
10 a controlled substance included in schedule 2 or an androgenic
11 anabolic steroid may be dispensed upon THE oral prescription of a
12 practitioner. ~~if, except as otherwise provided in this section~~
13 ~~and section 17766b, the prescribing practitioner promptly fills~~
14 ~~out an official prescription form and, until January 1, 1995,~~
15 ~~forwards the first and second copies of the official prescription~~
16 ~~form or, beginning January 1, 1995, forwards the official pre-~~
17 ~~scription form to the dispensing pharmacy within 72 hours after~~
18 ~~the oral prescription is issued, in compliance with~~
19 ~~section 7334(6). A prescription for an androgenic anabolic ste-~~
20 ~~roid other than methyltestosterone, testosterone, or fluoxymen-~~
21 ~~sterone, whether that methyltestosterone, testosterone, or fluo-~~
22 ~~xymensterone is prescribed alone or in combination with any other~~
23 ~~drug for which an official prescription form is not required, or~~
24 ~~for a controlled substance included in schedule 2 shall not be~~
25 ~~refilled.~~ Except for a terminally ill patient whose terminal
26 illness the pharmacist documents pursuant to rules promulgated by
27 the administrator, a prescription for an androgenic anabolic

1 steroid other than methyltestosterone, testosterone, or
2 fluoxymensterone, whether that methyltestosterone, testosterone,
3 or fluoxymensterone is prescribed alone or in combination with
4 any other drug ~~for which an official prescription form is not~~
5 ~~required,~~ or for a controlled substance included in schedule 2
6 shall not be filled more than ~~5~~ 30 days after the date on which
7 the prescription was issued. A prescription for a controlled
8 substance included in schedule 2 for a terminally ill patient
9 whose terminal illness the pharmacist documents pursuant to rules
10 promulgated by the administrator may be partially filled in
11 increments for not more than 60 days after the date on which the
12 prescription was issued.

13 ~~(3) The following are not required to be on an official~~
14 ~~prescription form:~~

15 ~~(a) A controlled substance included in schedule 2 or an~~
16 ~~androgenic anabolic steroid that is ordered for and administered~~
17 ~~to a patient in a hospital licensed by the department of public~~
18 ~~health or the department of mental health. An off-site pharmacy~~
19 ~~receiving a prescriber's order pursuant to this subdivision shall~~
20 ~~record the order as required by section 17708(3) and shall retain~~
21 ~~that record as if it were an official prescription form.~~

22 ~~(b) A controlled substance included in schedule 2 or an~~
23 ~~androgenic anabolic steroid that is ordered for and administered~~
24 ~~to a patient on the premises of a licensed health facility or~~
25 ~~agency other than a hospital. An off-site pharmacy receiving a~~
26 ~~prescriber's order pursuant to this subdivision shall record the~~

1 ~~order as required by section 17708(3) and shall retain that~~
2 ~~record as if it were an official prescription form.~~

3 ~~(c) A controlled substance included in schedule 2 or an~~
4 ~~androgenic anabolic steroid that is administered to a patient in~~
5 ~~the private practice office of a licensed physician, dentist, or~~
6 ~~podiatrist.~~

7 ~~(d) A controlled substance included in schedule 2 or an~~
8 ~~androgenic anabolic steroid that is administered to an animal by~~
9 ~~a licensed veterinarian in a veterinarian's office, animal~~
10 ~~clinic, animal hospital, zoo, or on the premises of the animal's~~
11 ~~domicile, and a commercially prepared, premixed solution of~~
12 ~~sodium pentobarbital administered to an animal for the purpose of~~
13 ~~euthanasia.~~

14 ~~(e) A prescription issued by a practitioner residing adja-~~
15 ~~cent to the land border between this state and an adjoining state~~
16 ~~who is authorized under the laws of that state to practice a~~
17 ~~health profession and whose practice may extend into this state,~~
18 ~~but who does not maintain an office or designate a place to meet~~
19 ~~patients or receive calls in this state.~~

20 ~~(f) A prescription for methyltestosterone, testosterone, or~~
21 ~~fluoxymensterone, alone or in combination with any other drug for~~
22 ~~which an official prescription form is not required.~~

23 ~~(g) A controlled substance described in section~~
24 ~~7214(c)(iv).~~

25 ~~(3) -(4)- Unless dispensed directly by a practitioner, other~~
26 ~~than a pharmacist, to an ultimate user, a controlled substance~~
27 ~~included in schedule 3 or 4 that is a prescription drug as~~

1 determined under section 503(b) of the federal food, drug, and
 2 cosmetic act, chapter 675, 52 Stat. ~~1040~~ 1051, 21 U.S.C. 353 or
 3 section 17708, shall not be dispensed without a written
 4 PRESCRIPTION ON A PRESCRIPTION FORM or AN oral prescription of a
 5 practitioner. ~~The~~ A prescription FOR A CONTROLLED SUBSTANCE
 6 INCLUDED IN SCHEDULE 3 OR 4 shall not be filled or refilled with-
 7 out specific refill instructions noted by the ~~prescriber~~
 8 PRACTITIONER. ~~The~~ A prescription FOR A CONTROLLED SUBSTANCE
 9 INCLUDED IN SCHEDULE 3 OR 4 shall not be filled or refilled later
 10 than 6 months after the date of the prescription or be refilled
 11 more than 5 times, unless renewed by the practitioner in accord-
 12 ance with rules promulgated by the administrator.

13 (4) ~~(5)~~ A controlled substance included in schedule 5
 14 shall not be distributed or dispensed other than for a medical
 15 purpose, or in any manner except in accordance with rules promul-
 16 gated by the administrator.

17 (5) ~~(6)~~ If a written prescription is required under this
 18 section, the written prescription shall contain the quantity of
 19 the controlled substance ~~or androgenic anabolic steroid~~ pre-
 20 scribed in both written and numerical terms. A written prescrip-
 21 tion is in compliance with this subsection if, in addition to
 22 containing the quantity of the controlled substance ~~or androge-~~
 23 ~~nic anabolic steroid~~ prescribed in written terms, it contains
 24 preprinted numbers representative of the quantity of the con-
 25 trolled substance ~~or an androgenic anabolic steroid~~ prescribed
 26 next to which is a box or line the prescriber may check. A
 27 PRACTITIONER WHO PRESCRIBES A CONTROLLED SUBSTANCE SHALL ENTER

1 THE NAME OF THE CONTROLLED SUBSTANCE, THE DOSAGE, THE QUANTITY
2 PRESCRIBED, AND THE INSTRUCTIONS FOR USE IN THE PATIENT'S PER-
3 MANENT MEDICAL RECORD.

4 (6) ~~(7)~~ A prescribing practitioner shall not use a pre-
5 scription form for a purpose other than prescribing. ~~A pre-~~
6 ~~scribing practitioner shall not postdate an official prescription~~
7 ~~form. A prescribing practitioner shall not sign an official pre-~~
8 ~~scription form on a day other than the day the prescription is~~
9 ~~issued.~~ A PRESCRIBING PRACTITIONER SHALL NOT POSTDATE A PRE-
10 SCRIPTION FORM FOR A CONTROLLED SUBSTANCE.

11 (7) ~~(8)~~ Notwithstanding subsections (1) to ~~(7)~~ (4), a
12 dog pound or animal shelter licensed or registered by the depart-
13 ment of agriculture pursuant to ~~Act No. 287 of the Public Acts~~
14 ~~of 1969, being sections 287.331 to 287.340 of the Michigan~~
15 ~~Compiled Laws~~ 1969 PA 287, MCL 287.331 TO 287.340, or a class B
16 dealer may acquire a limited permit only for the purpose of
17 buying, possessing, and administering a commercially prepared,
18 premixed solution of sodium pentobarbital to practice euthanasia
19 on injured, sick, homeless, or unwanted domestic pets and other
20 animals, if the dog pound or animal shelter or class B dealer
21 does all of the following:

22 (a) Applies to the administrator for a permit in accordance
23 with rules promulgated under this part. The application shall
24 contain the name of the individual in charge of the day to day
25 operations of the dog pound or animal shelter or class B dealer's
26 facilities and the name of the individual responsible for

1 designating employees who will be practicing euthanasia on
2 animals pursuant to this act.

3 (b) Complies with the rules promulgated by the administrator
4 for the storage, handling, and use of commercially prepared, pre-
5 mixed solution of sodium pentobarbital to practice euthanasia on
6 animals. A record of use shall be maintained and shall be avail-
7 able for inspection.

8 (c) Certifies that an employee of the dog pound or animal
9 shelter or class B dealer has received, and can document comple-
10 tion of, a minimum of 8 hours of training given by a licensed
11 veterinarian in the use of sodium pentobarbital to practice
12 euthanasia on animals pursuant to rules promulgated by the admin-
13 istrator, in consultation with the Michigan board of veterinary
14 medicine as these rules relate to this training, and that only an
15 individual described in this subdivision or an individual other-
16 wise permitted to use a controlled substance pursuant to this
17 article will administer the commercially prepared, premixed solu-
18 tion of sodium pentobarbital according to written procedures
19 established by the dog pound or animal shelter or class B
20 dealer.

21 (8) ~~(9)~~ The application described in subsection ~~(8)~~ (7)
22 shall include the names and addresses of all individuals employed
23 by the dog pound or animal shelter or class B dealer who have
24 been trained as described in subsection ~~(8)(c)~~ (7)(C) and the
25 name of the veterinarian who trained them. The list of names and
26 addresses shall be updated every 6 months.

1 (9) ~~(10)~~ If a dog pound or animal shelter or class B
2 dealer issued a permit pursuant to subsection ~~(8)~~ (7) does not
3 have in its employ an individual trained as described in subsec-
4 tion ~~(8)(c)~~ (7)(C), the dog pound or animal shelter or class B
5 dealer shall immediately notify the administrator and shall cease
6 to administer any commercially prepared, premixed solution of
7 sodium pentobarbital until the administrator is notified that 1
8 of the following has occurred:

9 (a) An individual trained as described in subsection
10 ~~(8)(c)~~ (7)(C) has been hired by the dog pound or animal shelter
11 or class B dealer.

12 (b) An employee of the dog pound or animal shelter or class
13 B dealer has been trained as described in subsection ~~(8)(c)~~
14 (7)(C).

15 (10) ~~(11)~~ A veterinarian, including a veterinarian who
16 trains individuals as described in subsection ~~(8)(c)~~ (7)(C), is
17 not civilly or criminally liable for the use of a commercially
18 prepared, premixed solution of sodium pentobarbital by a dog
19 pound or animal shelter or class B dealer unless the veterinarian
20 is employed by or under contract with the dog pound or animal
21 shelter or class B dealer and the terms of the veterinarian's
22 employment or the contract require the veterinarian to be respon-
23 sible for the use or administration of the commercially prepared,
24 premixed solution of sodium pentobarbital.

25 (11) ~~(12)~~ A person shall not knowingly use or permit the
26 use of a commercially prepared, premixed solution of sodium
27 pentobarbital in violation of this section.

1 (12) ~~(13)~~ This section does not require that a
2 veterinarian be employed by or under contract with a dog pound or
3 animal shelter or class B dealer to obtain, possess, or adminis-
4 ter a commercially prepared, premixed solution of sodium pento-
5 barbital pursuant to this section.

6 (13) ~~(14)~~ As used in this section, "class B dealer" means
7 a class B dealer licensed by the United States department of
8 agriculture pursuant to the animal welfare act, Public Law
9 89-544, 7 U.S.C. 2131 to 2147, 2149, and 2151 to 2159 and the
10 department of agriculture pursuant to ~~Act No. 224 of the Public~~
11 ~~Acts of 1969, being sections 287.381 to 287.395 of the Michigan~~
12 ~~Compiled Laws~~ 1969 PA 224, MCL 287.381 TO 287.395.

13 Sec. 7401. (1) Except as authorized by this article, a
14 person shall not manufacture, create, deliver, or possess with
15 intent to manufacture, create, or deliver a controlled substance,
16 a prescription form, ~~an official prescription form,~~ or a coun-
17 terfeit prescription form. A practitioner licensed by the admin-
18 istrator under this article shall not dispense, prescribe, or
19 administer a controlled substance for other than legitimate and
20 professionally recognized therapeutic or scientific purposes or
21 outside the scope of practice of the practitioner, licensee, or
22 applicant.

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

24 (a) A controlled substance classified in schedule 1 or 2
25 that is a narcotic drug or a drug described in section
26 7214(a)(iv) and:

1 (i) Which is in an amount of 650 grams or more of any
2 mixture containing that substance is guilty of a felony
3 punishable by imprisonment for life or any term of years but not
4 less than 20 years.

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

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

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

18 (b) Any other controlled substance classified in schedule 1,
19 2, or 3, except marihuana is guilty of a felony punishable by
20 imprisonment for not more than 7 years or a fine of not more than
21 \$10,000.00, or both.

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

25 (d) Marihuana or a mixture containing marihuana is guilty of
26 a felony punishable as follows:

1 (i) If the amount is 45 kilograms or more, or 200 plants or
2 more, by imprisonment for not more than 15 years or a fine of not
3 more than \$10,000,000.00, or both.

4 (ii) If the amount is 5 kilograms or more but less than 45
5 kilograms, or 20 plants or more but fewer than 200 plants, by
6 imprisonment for not more than 7 years or a fine of not more than
7 \$500,000.00, or both.

8 (iii) If the amount is less than 5 kilograms or fewer than
9 20 plants, by imprisonment for not more than 4 years or a fine of
10 not more than \$20,000.00, or both.

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

14 ~~(f) An official prescription form or a counterfeit official~~
15 ~~prescription form is guilty of a felony punishable by imprison-~~
16 ~~ment for not more than 20 years or a fine of not more than~~
17 ~~\$25,000.00, or both.~~

18 (F) ~~(g)~~ A prescription form or a counterfeit prescription
19 form ~~other than an official prescription form or a counterfeit~~
20 ~~official prescription form~~ is guilty of a felony punishable by
21 imprisonment for not more than 7 years or a fine of not more than
22 \$5,000.00, or both.

23 (3) A term of imprisonment imposed pursuant to subsection
24 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
25 imposed to run consecutively with any term of imprisonment
26 imposed for the commission of another felony. An individual
27 subject to a mandatory term of imprisonment under subsection

1 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not
2 be eligible for probation, suspension of that sentence, or parole
3 during that mandatory term, except and only to the extent that
4 those provisions permit probation for life, and shall not receive
5 a reduction in that mandatory term of imprisonment by disci-
6 plinary credits or any other type of sentence credit reduction.

7 (4) The court may depart from the minimum term of imprison-
8 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
9 the court finds on the record that there are substantial and com-
10 pelling reasons to do so. In addition, if any of the following
11 apply, the court may depart from the minimum term of imprisonment
12 authorized under subsection (2)(a)(ii), (iii), or (iv) if the
13 individual has not previously been convicted of a felony or an
14 assaultive crime and has not been convicted of another felony or
15 assaultive crime arising from the same transaction as the viola-
16 tion of this section:

17 (a) The person is within the jurisdiction of the circuit
18 court under section 606 of the revised judicature act of 1961,
19 1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of 1939
20 PA 288, MCL 712A.4.

21 (b) The person is being sentenced under section 18(1)(n) of
22 chapter XIIA of 1939 PA 288, MCL 712A.18.

23 (5) As used in this section:

24 (a) "Assaultive crime" means a violation of chapter XI of
25 the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90.

1 (b) "Plant" means a marihuana plant that has produced
2 cotyledons or a cutting of a marihuana plant that has produced
3 cotyledons.

4 Sec. 7403. (1) A person shall not knowingly or intention-
5 ally possess a controlled substance, a controlled substance anal-
6 ogue, ~~or an official prescription form~~ or a prescription form
7 unless the controlled substance, controlled substance analogue,
8 ~~official prescription form,~~ or prescription form was obtained
9 directly from, or pursuant to, a valid prescription or order of a
10 practitioner while acting in the course of the practitioner's
11 professional practice, or except as otherwise authorized by this
12 article.

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

14 (a) A controlled substance classified in schedule 1 or 2
15 that is a narcotic drug or a drug described in section
16 7214(a)(iv), and:

17 (i) Which is in an amount of 650 grams or more of any mix-
18 ture containing that substance is guilty of a felony and shall be
19 imprisoned for life except as otherwise provided in this
20 subparagraph. A person convicted of violating this subparagraph
21 may be punished as provided by law by imposing a sentence of
22 imprisonment for any term of years but not less than 25 years if
23 any of the following apply:

24 (A) The person is within the jurisdiction of the circuit
25 court ~~or recorder's court of the city of Detroit~~ under
26 section 606 of the revised judicature act of 1961, ~~Act No. 236~~
27 ~~of the Public Acts of 1961, being section 600.606 of the Michigan~~

1 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, OR section 4 of chapter
2 XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
3 ~~section 712A.4 of the Michigan Compiled Laws, or~~
4 ~~section 10a(1)(c) of Act No. 369 of the Public Acts of 1919,~~
5 ~~being section 725.10a of the Michigan Compiled Laws~~ THE PROBATE
6 CODE OF 1939, 1939 PA 288, MCL 712A.4.

7 (B) The person is being sentenced under section 18(1)(n) of
8 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
9 ~~section 712A.18 of the Michigan Compiled Laws~~ THE PROBATE CODE
10 OF 1939, 1939 PA 288, MCL 712A.18.

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

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

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

24 (v) Which is in an amount less than 25 grams of any mixture
25 containing that substance is guilty of a felony punishable by
26 imprisonment for not more than 4 years or a fine of not more than
27 \$25,000.00, or both.

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

7 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
8 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
9 sified in schedule 5, is guilty of a misdemeanor punishable by
10 imprisonment for not more than 1 year or a fine of not more than
11 \$2,000.00, or both.

12 (d) Marihuana, is guilty of a misdemeanor punishable by
13 imprisonment for not more than 1 year or a fine of not more than
14 \$2,000.00, or both.

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

18 (E) ~~(f) A prescription form, other than an official pre-~~
19 ~~scription form,~~ is guilty of a misdemeanor punishable by impris-
20 onment for not more than 1 year or a fine of not more than
21 \$1,000.00, or both.

22 (3) The court may depart from the minimum term of imprison-
23 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
24 the court finds on the record that there are substantial and com-
25 pelling reasons to do so. In addition, if any of the following
26 apply, the court may depart from the minimum term of imprisonment
27 authorized under subsection (2)(a)(ii), (iii), or (iv) if the

1 individual has not previously been convicted of a felony or an
2 assaultive crime and has not been convicted of another felony or
3 assaultive crime arising from the same transaction as the viola-
4 tion of this section:

5 (a) The person is within the jurisdiction of the circuit
6 court ~~or recorder's court of the city of Detroit~~ under
7 section 606 of the revised judicature act of 1961, ~~Act No. 236~~
8 ~~of the Public Acts of 1961, being section 600.606 of the Michigan~~
9 ~~Compiled Laws~~ 1961 PA 236, MCL 600.606, OR section 4 of chapter
10 XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
11 ~~section 712A.4 of the Michigan Compiled Laws, or~~
12 ~~section 10a(1)(c) of Act No. 369 of the Public Acts of 1919,~~
13 ~~being section 725.10a of the Michigan Compiled Laws~~ THE PROBATE
14 CODE OF 1939, 1939 PA 288, MCL 712A.4.

15 (b) The person is being sentenced under section 18(1)(n) of
16 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
17 ~~section 712A.18 of the Michigan Compiled Laws~~ THE PROBATE CODE
18 OF 1939, 1939 PA 288, MCL 712A.18.

19 (4) As used in subsection (3), "assaultive crime" means a
20 violation of chapter XI of the Michigan penal code, ~~Act No. 328~~
21 ~~of the Public Acts of 1931, being sections 750.81 to 750.90 of~~
22 ~~the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.81 TO 750.90.

23 Sec. 7407. (1) A person shall not knowingly or
24 intentionally:

25 (a) Distribute as a licensee a controlled substance classi-
26 fied in schedule 1 or 2, except pursuant to an order form as
27 required by section 7331.

1 (b) Use in the course of the manufacture or distribution of
2 a controlled substance a license number ~~which~~ THAT is ficti-
3 tious, revoked, suspended, or issued to another person.

4 (c) Acquire or obtain possession of a controlled substance
5 by misrepresentation, fraud, forgery, deception, or subterfuge.

6 (d) Furnish false or fraudulent material information in, or
7 omit any material information from, an application, report,
8 ~~official prescription form,~~ or other document required to be
9 kept or filed under this article, or any record required to be
10 kept by this article.

11 (e) Make, distribute, or possess a punch, die, plate, stone,
12 or other thing designed to print, imprint, or reproduce the
13 trademark, trade name, or other identifying mark, imprint, or
14 device of another or any likeness of any of the foregoing upon a
15 drug or container or labeling thereof so as to render the drug a
16 counterfeit substance.

17 ~~(f) Knowingly and intentionally give, permit, or obtain~~
18 ~~access to information submitted to the department of commerce~~
19 ~~under section 7334, except as otherwise authorized by this~~
20 ~~article.~~

21 (F) ~~(g)~~ Possess counterfeit prescription forms, except as
22 an agent of government while engaged in the enforcement of this
23 part.

24 (2) A person shall not refuse or knowingly fail to make,
25 keep, or furnish any record, notification, order form, statement,
26 invoice, or other information required under this article.

1 (3) A person who violates this section is guilty of a
2 felony, punishable by imprisonment for not more than 4 years, or
3 a fine of not more than \$30,000.00, or both.

4 Sec. 7521. (1) The following property is subject to
5 forfeiture:

6 (a) A prescription form, ~~official prescription form,~~ con-
7 trolled substance, an imitation controlled substance, a con-
8 trolled substance analogue, an androgenic anabolic steroid, or a
9 counterfeit androgenic anabolic steroid ~~which~~ THAT has been
10 manufactured, distributed, dispensed, used, possessed, or
11 acquired in violation of this article or section 17766a.

12 (b) A raw material, product, or equipment of any kind which
13 is used, or intended for use, in manufacturing, compounding, pro-
14 cessing, delivering, importing, or exporting a controlled sub-
15 stance, a controlled substance analogue, an androgenic anabolic
16 steroid, or a counterfeit androgenic anabolic steroid in viola-
17 tion of this article or section 17766a; or a raw material, pro-
18 duct, or equipment of any kind which is intended for use in manu-
19 facturing, compounding, processing, delivering, importing, or
20 exporting an imitation controlled substance in violation of
21 section 7341.

22 (c) Property which is used, or intended for use, as a con-
23 tainer for property described in subdivision (a) or (b).

24 (d) Except as provided in subparagraphs (i) to (iv), a con-
25 veyance, including an aircraft, vehicle, or vessel used or
26 intended for use, to transport, or in any manner to facilitate

1 the transportation, for the purpose of sale or receipt of
2 property described in subdivision (a) or (b):

3 (i) A conveyance used by a person as a common carrier in the
4 transaction of business as a common carrier is not subject to
5 forfeiture unless it appears that the owner or other person in
6 charge of the conveyance is a consenting party or privy to a vio-
7 lation of this article.

8 (ii) A conveyance is not subject to forfeiture by reason of
9 any act or omission established by the owner of that conveyance
10 to have been committed or omitted without the owner's knowledge
11 or consent.

12 (iii) A conveyance is not subject to forfeiture for a viola-
13 tion of section 7403(2)(c) or (d), section 7404, or
14 section 7341(4).

15 (iv) A forfeiture of a conveyance encumbered by a bona fide
16 security interest is subject to the interest of the secured party
17 who neither had knowledge of nor consented to the act or
18 omission.

19 (e) Books, records, and research products and materials,
20 including formulas, microfilm, tapes, and data used, or intended
21 for use, in violation of this article or section 17766a.

22 (f) Any thing of value that is furnished or intended to be
23 furnished in exchange for a controlled substance, an imitation
24 controlled substance, an androgenic anabolic steroid, or a coun-
25 terfeit androgenic anabolic steroid in violation of this article
26 or section 17766a that is traceable to an exchange for a
27 controlled substance, an imitation controlled substance, an

1 androgenic anabolic steroid, or a counterfeit androgenic anabolic
2 steroid in violation of this article or section 17766a, or that
3 is used or intended to be used to facilitate any violation of
4 this article or section 17766a including, but not limited to,
5 money, negotiable instruments, or securities. To the extent of
6 the interest of an owner, a thing of value is not subject to for-
7 feiture under this subdivision by reason of any act or omission
8 that is established by the owner of the item to have been commit-
9 ted or omitted without the owner's knowledge or consent. Any
10 money that is found in close proximity to any property that is
11 subject to forfeiture under subdivision (a), (b), (c), (d), or
12 (e) ~~shall be~~ IS presumed to be subject to forfeiture under this
13 subdivision. This presumption may be rebutted by clear and con-
14 vincing evidence.

15 (g) Any other drug paraphernalia not described in subdivi-
16 sion (b) or (c).

17 (2) As used in this section:

18 (a) "Androgenic anabolic steroid" means that term as defined
19 in section 17766a.

20 (b) "Counterfeit androgenic anabolic steroid" means that
21 term as defined in section 17766a.

22 (c) "Imitation controlled substance" means that term as
23 defined in section 7341.

24 Sec. 16204b. (1) The legislature finds that the treatment
25 of intractable pain is an appropriate issue for the legislature
26 to consider, and that the citizens of this state would be well

1 served by the enactment of legislation that accomplishes all of
2 the following:

3 (a) Provides more and better information to health care con-
4 sumers regarding the medical treatment of intractable pain,
5 health care coverage and benefits for the treatment of intracta-
6 ble pain, and the education of health professionals in pain and
7 symptom management.

8 (b) Provides for the appointment of an advisory body to
9 study and make recommendations on model core curricula on pain
10 and symptom management for the institutions in this state provid-
11 ing health care education, continuing education for health pro-
12 fessionals on pain and symptom management, and the integration of
13 pain and symptom management into the customary practice of health
14 care.

15 (c) Educates health professionals about the ~~official pre-~~
16 ~~scription form program and the~~ disciplinary process for state
17 licensees and registrants, including, but not limited to, how the
18 department of consumer and industry services processes allega-
19 tions of wrongdoing against licensees and registrants.

20 (2) As used in this section, ~~:(a) "Intractable"~~
21 "INTRACTABLE pain" means that term as defined in section 16204a.

22 ~~(b) "Official prescription form" means that term as defined~~
23 ~~in section 7107.~~

24 Sec. 16204c. (1) The legislature finds that the use of con-
25 trolled substances is appropriate in the medical treatment of
26 certain forms of intractable pain, and that efforts to control
27 diversion or improper administration of controlled substances

1 should not interfere with the legitimate, medically recognized
2 use of those controlled substances to relieve pain and
3 suffering.

4 (2) The legislature finds ~~all of the following: (a) That~~
5 THAT some patients in this state with intractable pain are unable
6 to obtain from their health care providers sufficient pain relief
7 through the prescription of controlled substances, especially
8 controlled substances included in schedule 2 under section 7214.
9 ~~, due to the circumstances described in subdivision (b).~~

10 ~~(b) The regulatory scheme of official prescription forms~~
11 ~~created in sections 7333 and 7334 is perceived in some cases to~~
12 ~~discourage the appropriate use of opioids in the treatment of~~
13 ~~patients described in subdivision (a).~~

14 (3) ~~Based on the findings described in subsections (1) and~~
15 ~~(2), the legislature states that the official prescription form~~
16 ~~program enacted in sections 7333 and 7334 was created to prevent~~
17 ~~the abuse and diversion of controlled substances included in~~
18 ~~schedule 2 under section 7214 and not to prevent or inhibit the~~
19 ~~legitimate, medically recognized use of those controlled sub-~~
20 ~~stances to treat patients with cases of intractable pain, espe-~~
21 ~~cially long-term treatment.~~ It is the intent of the legislature
22 to permit and facilitate adequate treatment for intractable pain
23 by licensed health professionals, including, but not limited to,
24 the prescription or dispensing of controlled substances included
25 in schedule 2 under section 7214, when medically appropriate.

26 (4) As used in this section:

1 (a) "Controlled substance" means that term as defined in
2 section 7104.

3 (b) "Intractable pain" means that term as defined in section
4 16204a.

5 ~~(c) "Official prescription form" means that term as defined~~
6 ~~in section 7107.~~

7 Sec. 16204d. (1) The department of consumer and industry
8 services, in consultation with the department of community
9 health, shall develop, publish, and distribute an informational
10 booklet on intractable pain. The department of consumer and
11 industry services shall include at least all of the following in
12 the informational booklet:

13 (a) The definition of intractable pain contained in section
14 16204a.

15 (b) Pain management educational curricula and continuing
16 educational requirements of institutions providing health care
17 education recommended by the advisory committee on pain and symp-
18 tom management under section 16204a.

19 (c) Other information considered relevant or useful by the
20 department of consumer and industry services.

21 (2) The department of consumer and industry services ~~, in~~
22 ~~conjunction with the controlled substances advisory commission~~
23 ~~created in article 7,~~ shall develop and conduct an educational
24 program for health professionals who are licensed under part 73
25 to prescribe or dispense, or both, controlled substances. The
26 department of consumer and industry services shall include, at a
27 minimum, all of the following in the educational program:

1 ~~(a) Information on the history and purpose of the official~~
2 ~~prescription form program created in sections 7333 and 7334.~~

3 ~~(b) Information on how the department of consumer and indus-~~
4 ~~try services collects, processes, and compiles official prescrip-~~
5 ~~tion form information.~~

6 (A) ~~(c)~~ Information on how the department of consumer and
7 industry services processes allegations of wrongdoing against
8 licensees under this article and article 17, including, but not
9 limited to, how the permanent historical record is maintained for
10 each licensee, how and why a review of the permanent historical
11 record is done, and how the decision is made to issue a formal
12 complaint against a licensee.

13 (B) ~~(d)~~ Information on the disciplinary process, including
14 a licensee's rights and duties if an allegation of wrongdoing is
15 filed against the licensee or if some other circumstance occurs
16 that causes or requires the department of consumer and industry
17 services to review a licensee's individual historical record.

18 (C) ~~(e)~~ Other information considered relevant or useful by
19 the department of consumer and industry services, ~~or the con-~~
20 ~~trolled substances advisory commission,~~ especially information
21 that would address the findings and statements of intent con-
22 tained in section 16204c.

23 Sec. 16315. (1) The health professions regulatory fund is
24 established in the state treasury. Except as otherwise provided
25 in this section, the state treasurer shall credit the fees col-
26 lected under sections 16319 to 16349 to the health professions

1 regulatory fund. The money in the health professions regulatory
2 fund shall be expended only as provided in subsection (5).

3 (2) The state treasurer shall direct the investment of the
4 health professions regulatory fund. Interest and earnings from
5 health professions regulatory fund investment shall be credited
6 to the health professions regulatory fund.

7 (3) The unencumbered balance in the health professions regu-
8 latory fund at the close of the fiscal year shall remain in the
9 health professions regulatory fund and shall not revert to the
10 general fund.

11 (4) The health professions regulatory fund may receive gifts
12 and devises and other money as provided by law.

13 (5) The department OF CONSUMER AND INDUSTRY SERVICES shall
14 use the health professions regulatory fund only to carry out its
15 powers and duties under this article and article 7 including, but
16 not limited to, reimbursing the department of attorney general
17 for the reasonable cost of services provided to the department of
18 ~~commerce~~ CONSUMER AND INDUSTRY SERVICES under this article and
19 article 7.

20 (6) The nurse professional fund is established in the state
21 treasury. Of the money that is attributable to per-year license
22 fees collected under section 16327, the state treasurer shall
23 credit \$2.00 of each individual annual license fee collected to
24 the nurse professional fund. The money in the nurse professional
25 fund shall be expended only as provided in subsection (9).

26 (7) The state treasurer shall direct the investment of the
27 nurse professional fund, and shall credit interest and earnings

1 from the investment to the nurse professional fund. The nurse
2 professional fund may receive gifts and devises and other money
3 as provided by law.

4 (8) The unencumbered balance in the nurse professional fund
5 at the close of the fiscal year shall remain in the nurse profes-
6 sional fund and shall not revert to the general fund.

7 (9) The department OF CONSUMER AND INDUSTRY SERVICES shall
8 use the nurse professional fund each fiscal year only as
9 follows:

10 (a) The department may use not more than 1/3 of the nurse
11 professional fund for the establishment and operation of a nurse
12 continuing education program.

13 (b) The department may use not more than 1/3 of the nurse
14 professional fund to perform research and development studies to
15 promote and advance the nursing profession.

16 (c) The department shall use not less than 1/3 of the nurse
17 professional fund to establish and operate a nursing scholarship
18 program.

19 (10) ~~Within 2 years after the effective date of this~~
20 ~~section~~ BY APRIL 1, 1996, the department OF CONSUMER AND INDUS-
21 TRY SERVICES shall promulgate rules to implement subsection (9)
22 including, but not limited to, rules governing the continuing
23 education program and rules to establish eligibility criteria for
24 participation in the nursing scholarship program, application
25 procedures, and maximum amounts for individual scholarships.

26 (11) The official prescription form program fund ~~is~~
27 established ~~in the state treasury and shall be administered by~~

1 ~~the department~~ BY THE AMENDATORY ACT THAT ADDED THIS SECTION IS
2 ABOLISHED. THE MONEY REMAINING IN THE OFFICIAL PRESCRIPTION FORM
3 PROGRAM FUND ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
4 ADDED SUBSECTION (12) SHALL BE TRANSFERRED BY THE STATE TREASURER
5 TO THE HEALTH PROFESSIONS REGULATORY FUND CREATED IN SUBSECTION
6 (1).

7 (12) THE PAIN MANAGEMENT EDUCATION AND CONTROLLED SUBSTANCES
8 ANTI-DIVERSION FUND IS ESTABLISHED IN THE STATE TREASURY.

9 (13) THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE
10 FUND. INTEREST AND EARNINGS FROM INVESTMENT OF THE FUND SHALL BE
11 CREATED TO THE FUND.

12 (14) THE UNENCUMBERED BALANCE IN THE FUND AT THE CLOSE OF
13 THE FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO
14 THE GENERAL FUND. THE FUND MAY RECEIVE GIFTS AND DEVISES AND
15 OTHER MONEY AS PROVIDED BY LAW. Twenty dollars of the license fee
16 received by the department OF CONSUMER AND INDUSTRY SERVICES
17 under section 16319 shall be deposited with the state treasurer
18 to the credit of the ~~official prescription form program~~ fund.
19 The department shall use the fund only in connection with pro-
20 grams relating to ~~the official prescription forms required under~~
21 ~~article 7. Any unexpended balance in the fund at the end of a~~
22 ~~fiscal year shall carry forward to the next fiscal year.~~ PAIN
23 MANAGEMENT EDUCATION FOR HEALTH PROFESSIONALS AND PREVENTING THE
24 DIVERSION OF CONTROLLED SUBSTANCES. AS USED IN THIS SUBSECTION
25 AND IN SUBSECTIONS (12) AND (13), "FUND" MEANS THE PAIN MANAGE-
26 MENT EDUCATION AND CONTROLLED SUBSTANCES ANTI-DIVERSION FUND.

1 Enacting section 1. Sections 7111, 7112, 7113, 7334, and
2 17766b of the public health code, 1978 PA 368, MCL 333.7111,
3 333.7112, 333.7113, 333.7334, and 333.17766b, are repealed.