PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

ARTICLE 7
CONTROLLED SUBSTANCES

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 committee 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

PART 72
STANDARDS AND SCHEDULES

333.7201 Administration of article; adding, deleting, or rescheduling substances.

Sec. 7201. The administrator shall administer this article and may add substances to, or delete or reschedule all substances enumerated in the schedules in sections 7212, 7214, 7216, 7218, and 7220 in compliance with the administrative procedures act of 1969.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 2012, Act 182, Imd. Eff. June 19, 2012.

Constitutionality: The Legislature's delegation to the Board of Pharmacy of the authority to schedule controlled substances in accordance with detailed criteria is not an unlawful delegation of power. People v Turmon, 417 Mich 638; 340 NW2d 620 (1983).

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.

Popular name: Act 368

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

333.7202 Considerations in making determination regarding substance; emergency rule.

Sec. 7202. (1) In making a determination regarding a substance, the administrator shall consider all of the following:

(a) The actual or relative potential for abuse.

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

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

(d) The history and current pattern of abuse.

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

(f) The risk to the public health.

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

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

(2) In making a determination regarding a substance that is the subject of an emergency rule, the administrator shall consider all of the factors set forth in subsection (1) and shall also consider whether the administrator has been notified that the substance constitutes an imminent danger as defined in section 2251.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 2012, Act 182, Imd. Eff. June 19, 2012.

Popular name: Act 368

333.7203 Findings; rule controlling substance; imminent danger; extension of emergency rule; substance as precursor of controlled precursor.

Sec. 7203. (1) After considering the factors enumerated in section 7202(1), the administrator shall make findings with respect to those factors and promulgate a rule controlling the substance if the administrator finds the substance has a potential for abuse.

(2) If the administrator is notified in writing by the director of the department of community health under section 2251 that a substance constitutes an imminent danger as defined in that section, the administrator shall consider the factors enumerated in section 7202(1) and (2) and make findings with respect to those factors and may do either or both of the following:

(a) Proceed under section 48(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 28.248, to schedule or reschedule the substance as a controlled substance by emergency rule.

(b) Initiate and pursue the process to promulgate a rule controlling the substance.

(3) The administrator may extend an emergency rule processed under subsection (2)(a) by filing a certificate of extension with the office of secretary of state before the expiration of the emergency rule as provided in section 48(2) of the administrative procedures act of 1969.

(4) If the administrator designates a substance as an immediate precursor, a substance that is a precursor of the controlled precursor is not subject to control solely because it is a precursor of the controlled precursor.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 2012, Act 182, Imd. Eff. June 19, 2012.

Popular name: Act 368

333.7204 Substance designated, rescheduled, or deleted as controlled substance under federal law; notice; board meeting; similar control of substance by administrator; publication of reasons for determination.

Sec. 7204. If a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that designation, rescheduling, or deletion is given to the administrator, the substance shall be similarly scheduled under section 7201 unless the administrator holds a board meeting within the expiration of 91 days after notice is received to determine whether the substance should be similarly controlled under section 7201. If the administrator decides not to similarly control the substance, the administrator shall, within 91 days after that decision is made, publish the reasons for that determination.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2012, Act 182, Imd. Eff. June 19, 2012.

Popular name: Act 368

333.7206 Scientific advisory commission; creation; purpose; appointment and terms of

members; recommendations.

Sec. 7206. (1) A 7-member scientific advisory commission is created to serve as a consultative and advisory body to the administrator in all matters relating to the classification, reclassification, addition to, or deletion from, all substances presently classified as controlled substances in schedules 1 to 5, or substances not presently controlled or yet to come into being. The scientific advisory commission shall be composed of 2 physicians to be appointed by the director of public health; 2 pharmacists to be appointed by the director of commerce; the chief of the crime detection laboratory of the department of public health; the director of mental health or his or her designee; and the director of the department of state police or his or her designee. The physician and pharmacist appointments shall be for 2-year terms.

(2) The administrator shall receive the recommendations of the scientific advisory commission pursuant to administration over the controlled substances for inclusion in or exclusion from schedules 1 to 5, especially in the implementation of scheduled substances changes as provided in section 7201, except that the administrator is not bound by recommendations of the scientific advisory commission.

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

Popular name: Act 368

333.7208 Authority to control; exclusions.

Sec. 7208. (1) Authority to control under this article does not extend to distilled spirits, wine, malt beverages, or tobacco.

(2) Except as provided in section 7220(1)(c), the administrator shall exclude a nonnarcotic substance from a schedule if the substance, under the federal food, drug, and cosmetic act of 1938, 21 U.S.C. 301 to 392, and the laws of this state, may be lawfully sold over the counter without a prescription.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1999, Act 144, Eff. Jan. 21, 2000.

Popular name: Act 368

333.7210 Inclusion of controlled substances by whatever name designated.

Sec. 7210. The controlled substances listed or to be listed in the schedules in sections 7212, 7214, 7216, 7218, and 7220 are included by whatever official, common, usual, chemical, or trade name designated.

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

Popular name: Act 368

333.7211 Schedule 1; placement of substance.

Sec. 7211. The administrator shall place a substance in schedule 1 if it finds that the substance has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

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

Constitutionality: The Legislature's delegation to the Board of Pharmacy of the authority to schedule controlled substances in accordance with detailed criteria is not an unlawful delegation of power. People v Turmon, 417 Mich. 638; 340 NW2d 620 (1983).

Popular name: Act 368

333.7212 Schedule 1; controlled substances included.

Sec. 7212. (1) The following controlled substances are included in schedule 1:

(a) Any of the following opiates, including their isomers, esters, the ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetylmethadol	Difenoxin	Noracymethadol
Allylprodine	Dimenoxadol	Norlevorphanol
Alpha-acetylmethadol	Dimepheptanol	Normethadone
Alphameprodine	Dimethylthiambutene	Norpipanone
Alphamethadol	Dioxaphetyl butyrate	Phenadoxone
Benzethidine	Dipipanone	Phenampromide
Betacetylmethadol	Ethylmethylthiambutene	Phenomorphan
Betameprodine	Etonitazene	Phenoperidine
Betamethadol	Etoxeridine	Piritramide
Betaprodine	Furethidine	Proheptazine
Clonitazene	Hydroxypethidine	Properidine
Dextromoramide	Ketobemidone	Propiram
Diampromide	Levomoramide	Racemoramide

Diethylthiambutene	Levophenacylmorphan	Trimeperidine
	Morpheridine	

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine	Drotebanol	Morphine-N-Oxide
Acetyldihydrocodeine	Etorphine	Myrophine
Benzylmorphine	Heroin	Nicocodeine
Codeine methylbromide	Hydromorphinol	Nicomorphine
Codeine-N-Oxide	Methyldesorphine	Normorphine
Cyprenorphine	Methyldihydromorphine	Pholcodine
Desomorphine	Morphine methylbromide	Thebacon
Dihydromorphine	Morphine methylsulfonate	

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, when the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

2-Methylamino-1-phenylpropan-1-one
Some trade and other names:
Methcathinone
Cat
Ephedrone
3, 4-methylenedioxy amphetamine
5-methoxy-3, 4-methylenedioxy
amphetamine
3, 4, 5-trimethoxy amphetamine
Bufotenine
Some trade and other names:
3-(B-dimethylaminoethyl)-5 hydrozyindole
3-(2-dimethylaminoethyl)-5 indolol
N,N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine
Mappine
2, 5-Dimethoxyamphetamine
Some trade or other names:
2, 5-Dimethoxy-a-methylphenethylamine; 2,5-DMA
4-Bromo-2, 5-Dimethoxyamphetamine
Some trade or other names:
4-bromo-2, 5 dimethoxy-a-methylphenethylamine; 4-bromo
2,5-DMA
Diethyltryptamine
Some trade and other names:
N,N-Diethyltryptamine; DET
Dimethyltryptamine
Some trade or other names:
DMT
4-methyl-2, 5-dimethoxyamphetamine
Some trade and other names:
4-methyl-2, 5-dimethoxy-a-methyl-phenethylamine
DOM, STP
4-methoxyamphetamine
Some trade or other names:
4-methoxy-a-methylphenethylamine; paramethoxy amphetamine;
PMA
Ibogaine
Some trade and other names:
7-Ethyl-6,6a,7,8,9,10,12,13
Octahydro-2-methoxy-6,9-methano-5H-
pyrido (1, 2:1, 2 azepino 4, 5-b) indole
tabernanthe iboga

Lysergic acid diethylamide
Except as provided in subsection (2), Marihuana, including pharmaceutical-grade cannabis
Mecloqualone
Mescaline
Peyote
N-ethyl-3 piperidyl benzilate
N-methyl-3 piperidyl benzilate
Psilocybin
Psilocyn
Thiophene analog of phencyclidine
Some trade or other names:
1-(1-(2-thienyl)cyclohexyl) piperidine
2-thienyl analog of phencyclidine; TPCP

(d) Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity, or both, such as the following, are included in schedule 1:

(*i*) /\1 cis or trans tetrahydrocannabinol, and their optical isomers.

(*ii*) /\6 cis or trans tetrahydrocannabinol, and their optical isomers.

(*iii*) /\3,4, cis or trans tetrahydrocannabinol, and their optical isomers.

(e) Synthetic cannabinoids. As used in this subdivision, "synthetic cannabinoids" includes any material, compound, mixture, or preparation that is not otherwise listed as a controlled substance in this schedule or in schedules II through V, is not approved by the federal food and drug administration as a drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically excepted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

(*i*) Any compound containing a 3-(1-naphthoyl)indole structure, also known as napthoylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-007, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398, AM-1220, AM-2201, and WIN-55, 212-2.

(*ii*) Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure, also known as napthylmethylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-175, and JWH-184.

(*iii*) Any compound containing a 3-(1-naphthoyl)pyrrole structure, also known as naphthoylpyrroles with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2- piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the pyrrole ring to any extent and whether or not substituted on the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-370, JWH-030.

(*iv*) Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indene ring to any extent and whether or not substituted on the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-176.

(*v*) Any compound containing a 3-phenylacetylindole structure, also known as phenacetylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the phenyl ring to any extent. Examples of this structural class include but are not limited to: RCS-8 (SR-18), JWH-250, JWH-203, JWH-251, and JWH-302.

(*vi*) Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure, also known as cyclohexylphenols, with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group,

whether or not substituted on the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to: CP-47,497 (and homologues(analogs)), cannabicyclohexanol, and CP-55,940.

(*vii*) Any compound containing a 3-(benzoyl)indole structure, also known as benzoylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the indole ring to any extent and whether or not substituted on the phenyl ring to any extent. Examples of this structural class include but are not limited to: AM-694, pravadoline (WIN-48,098), RCS-4, AM-630, AM-679, AM-1241, and AM-2233.

(*viii*) Any compound containing a 11-hydroxy-/\8-tetrahydrocannabinol structure, also known as dibenzopyrans, with further substitution on the 3-pentyl group by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkyethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group. Examples of this structural class include but are not limited to: HU-210, JWH-051, JWH-133.

(*ix*) Any compound containing a 3-(L-adamantoyl)indole structure, also known as adamantoylindoles, with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted on the adamantyl ring system to any extent. Examples of this structural class include but are not limited to: AM-1248.

(*x*) Any other synthetic chemical compound that is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring cannabinoids that is not listed in schedules II through V and is not approved by the federal food and drug administration as a drug.

(f) Compounds of structures referred to in subdivision (d), regardless of numerical designation of atomic positions, are included.

(g) Gamma-hydroxybutyrate and any isomer, salt, or salt of isomer of gamma-hydroxybutyrate.

Some trade and other names:

Sodium oxybate

4-hydroxybutanoic acid monosodium salt

(h) 3,4-methylenedioxymethamphetamine.

Some trade and other names:

Ecstasy

MDMA

(i) N-Benzylpiperazine

Some trade and other names:

BZP

Benzylpiperazine

1-(phenylmethyl)-piperazine

(j) 3-Chlorophenylpiperazine

Some trade and other names:

MCPP

(k) 1-(3-Trifluoromethylphenyl)piperazine

Some trade and other names:

TFMPP

(*l*) 4-Bromo-2,5-dimethoxybenzylpiperazine

Some trade and other names:

2C-B-BZP

(m) All of the following:

(*i*) (6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol.

Some trade and other names:

HU-210

(*ii*) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol and its side chain homologues.

Some trade and other names:

CP47,497

(*iii*) 1-pentyl-3-(1-naphthoyl)indole.

Some trade and other names:

JWH-018

(*iv*) 1-butyl-3-(1-naphthoyl)indole.

Some trade and other names:

JWH-073

(*v*) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone.
Some trade and other names:
JWH-015
(*vi*) [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-naphthalenyl-methanone.
Some trade and other names:
JWH-200
(*vii*) 1-(1-pentyl-1H-indol-3-yl)-2-(2-methoxyphenyl)-ethanone.
Some trade and other names:
JWH-250
(n) Mephedrone (4-methylmethcathinone).
Some trade and other names:
4-MMC, M-Cat, meow meow, miaow miaow, bounce, bubbles,
bubble love, mad cow, plant food, drone, and neo doves
(o) 4-Methyl-alpha-pyrrolidinobutyrophenone.
Some trade and other names:
MPBP
(p) Methylenedioxypyrovalerone
Some trade and other names:
MDPV, Bath salts, charge plus, cloud nine, hurricane
Charlie, ivory wave, ocean, red dove, scarface, sonic, white
dove, white lightning
(q) 5,6-Methylenedioxy-2-aminoindane
Some trade and other names:
MDAI
Woof-woof
(r) Naphyrone (Naphthylpyrovalerone)
Some trade and other names:
NRG-1
Rave
(s) Pyrovalerone (1-(4-Methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone)
(t) Catha edulis; except as provided in subdivision (u) and section 7218, all parts of the plant presently classified botanically as catha edulis, whether growing or not; the leaves and seeds of that plant; any extract from any part of that plant; and every compound, salt, derivative, mixture, or preparation of that plant or its leaves, seeds, or extracts.
Some trade and other names:
Khat
Qat
(u) Cathinone.
(v) Salvia divinorum; except as provided in subdivision (w), all parts of the plant presently classified botanically as salvia divinorum, whether growing or not; the leaves and seeds of that plant; any extract from any part of that plant; and every compound, salt, derivative, mixture, or preparation of that plant or its leaves, seeds, or extracts.
(w) Salvinorin A.
(x) Synthetic cathinones. As used in this subdivision, "synthetic cathinones" includes any material, compound, mixture, or preparation that is not otherwise listed as a controlled substance in this schedule or in schedules II through V, is not approved by the federal food and drug administration as a drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically excepted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:
(*i*) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a monocyclic or fused polycyclic ring system and a substitution at the nitrogen atom by an alkyl group, cycloalkyl group, or incorporation into a heterocyclic structure. Examples of this structural class include, but are not limited to, dimethylcathinone, ethcathinone, and alpha-pyrrolidinopropiophenone.
(*ii*) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a monocyclic or fused polycyclic ring system and a substitution at the 3-position carbon with an alkyl, haloalkyl, or alkoxy group. Examples of this structural class include, but are not limited to, naphyrone.
(*iii*) Any compound containing a 2-amino-1-propanone structure with substitution at the 1-position with a

monocyclic or fused polycyclic ring system and a substitution at any position of the ring system with an alkyl, haloalkyl, halogen, alkylenedioxy, or alkoxy group, whether or not further substituted at any position on the ring system to any extent. Examples of this structural class include, but are not limited to, mephedrone, methylone, and 3-fluoromethylone.

(2) Marihuana, including pharmaceutical-grade cannabis, is a schedule 2 controlled substance if it is manufactured, obtained, stored, dispensed, possessed, grown, or disposed of in compliance with this act and as authorized by federal authority.

(3) For purposes of subsection (1), "isomer" includes the optical, position, and geometric isomers.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1979, Act 125, Imd. Eff. Oct. 22, 1979;—Am. 1982, Act 352, Imd. Eff. Dec. 21, 1982;—Am. 1993, Act 25, Eff. May 1, 1993;—Am. 1998, Act 248, Imd. Eff. July 9, 1998;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 171, Eff. Oct. 1, 2010;—Am. 2011, Act 88, Eff. Aug. 1, 2011;—Am. 2012, Act 183, Eff. July 1, 2012;—Am. 2013, Act 268, Imd. Eff. Dec. 30, 2013.

Compiler's note: In subsection (1)(e)(*ix*), "3-(L-adamantoyl)indole structure" evidently should read "3-(1-adamantoyl)indole structure."

Popular name: Act 368

333.7213 Schedule 2; placement of substance.

Sec. 7213. The administrator shall place a substance in schedule 2 if it finds all of the following:

(a) The substance has high potential for abuse.

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions.

(c) The abuse of the substance may lead to severe psychic or physical dependence.

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

Popular name: Act 368

333.7214 Schedule 2; controlled substances included.

Sec. 7214. The following controlled substances are included in schedule 2:

(a) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(*i*) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding nalaxone and its salts, and excluding naltrexone and its salts, but including the following:

Raw opium
Opium extracts
Opium Fluid-extracts
Powdered opium
Granulated opium
Tincture of opium
Codeine
Ethylmorphine
Etorphine hydrochloride
Hydrocodone
Hydromorphone
Metopon
Morphine
Oxycodone
Oxymorphone
Thebaine

(*ii*) A salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with a substance referred to in this subdivision, except that these substances do not include the isoquinoline alkaloids of opium.

(*iii*) Opium poppy, poppy straw, and concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form, which contains the phenanthrene alkaloids of the opium poppy.

(*iv*) Coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, except that the substances do not include decocainized coca leaves or extraction of coca leaves which extractions do not contain cocaine or ecgonine. The substances include cocaine, its salts, stereoisomers, and salts of stereoisomers when the existence of the salts, stereoisomers, and salts of stereoisomers is possible within the specific chemical designation.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, when the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alphaprodine
Anileridine
Bezitramide
Dihydrocodeine
Diphenoxylate
Fentanyl
Isomethadone
Levomethorphan
Levorphanol
Metazocine
Methadone

Methadone-Intermediate, 4-cyano-2dimethylamino-4, 4-diphenyl butane Moramide-Intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid

Pethidine

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid

Phenazocine
Piminodine
Racemethorphan
Racemorphan

(c) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having potential for abuse associated with a stimulant effect on the nervous system:

(*i*) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(*ii*) Any substance which contains any quantity of methamphetamine, including its salts, stereoisomers, and salts of stereoisomers.

(*iii*) Phenmetrazine and its salts.

(*iv*) Methylphenidate and its salts.

(d) Any material, compound, mixture, or preparation, including its salts, isomers, and salts of isomers when the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation as listed in schedule 2, which contains any quantity of the following substances having a potential for abuse associated with the depressant effect on the central nervous system: methaqualone, amobarbital, pentobarbital, or secobarbital; or, any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof in combination with itself, with another, or with 1 or more other controlled substances.

(e) Marihuana, but only for the purpose of treating a debilitating medical condition as that term is defined in section 3(b) of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26423, and as authorized under this act.

(f) Tianeptine sodium.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1979, Act 125, Imd. Eff. Oct. 22, 1979;—Am. 1981, Act 231, Imd. Eff. Jan. 13, 1982;—Am. 1982, Act 352, Imd. Eff. Dec. 21, 1982;—Am. 2013, Act 268, Imd. Eff. Dec. 30, 2013;—Am. 2018, Act 107, Eff. July 4, 2018.

Popular name: Act 368

333.7215 Schedule 3; placement of substance.

Sec. 7215. The administrator shall place a substance in schedule 3 if it finds all of the following:

(a) The substance has a potential for abuse less than the substances listed in schedules 1 and 2.

(b) The substance has currently accepted medical use in treatment in the United States.

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

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

Popular name: Act 368

333.7216 Schedule 3; controlled substances included; rules.

Sec. 7216. (1) The following controlled substances are included in schedule 3:

(a) Unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, including optical, position, or geometric isomers, and salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine
Chlorphentermine
Clortermine
Edrisal tabs
Genegesic caps
Hovizyme tabs
Mazindol
Mediatric tabs
Mediatric liquid
Phendimetrazine
Special formula 711 tabs
Thora Dex No. 1 tab
Thora Dex No. 2 tab

(b) Unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, including optical, position, or geometric isomers, and

salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Chlorhexadol
Glutethimide
Lysergic acid
Lysergix acid amide
Methyprylon
Phencyclidine
Sulfondiethylmethane
Sulfonethylmethane
Sulfonmethane

(c) Nalorphine.

(d) Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules.

(e) A compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or a salt of amobarbital, secobarbital, or pentobarbital, and 1 or more other active medicinal ingredients that are not listed in a schedule.

(f) A suppository dosage form containing amobarbital, secobarbital, pentobarbital, or a salt of amobarbital, secobarbital, or pentobarbital and approved by the food and drug administration for marketing only as a suppository.

(g) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or their salts:

(*i*) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(*ii*) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts.

(*iii*) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(*iv*) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts.

(*v*) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts.

(*vi*) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts.

(*vii*) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts.

(*viii*) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams, with 1 or more active nonnarcotic ingredients in recognized therapeutic amounts.

(h) Any material, compound, mixture, or preparation containing any quantity of ketamine, a salt of ketamine, an isomer of ketamine, or a salt of an isomer of ketamine.

(2) The administrator may promulgate rules to except a compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (1)(a) and (b) from the application of all or any part of this article if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1999, Act 42, Eff. Aug. 15, 1999.

Popular name: Act 368

333.7217 Schedule 4; placement of substance.

Sec. 7217. The administrator shall place a substance in schedule 4 if it finds all of the following:

(a) The substance has a low potential for abuse relative to substances in schedule 3.

(b) The substance has currently accepted medical use in treatment in the United States.

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule 3.

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

Popular name: Act 368

333.7218 Schedule 4; controlled substances included.

Sec. 7218. (1) The following controlled substances are included in schedule 4:

(a) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Barbital
Chloral Betaine
Chloral Hydrate
Chlordiazepoxide
Clonazepam
Clorazepate
Dextropropoxyphene
Diazepam
Ethchlorvynol
Ethinamate
Flunitrazepam
Flurazepam
Lorazepam
Mebutamate
Meprobamate
Methohexital
Methylphenobarbital
Oxazepam
Paraldehyde
Petrichloral
Phenobarbital
Prazepam

(b) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with an effect on the central nervous system, including their salts, optical, positional, or geometric isomers, and salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible.

Fenfluramine

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, optical, positional, or geometric isomers, and salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

Diethylpropion

Phentermine

Pemoline, including organometallic complexes and chelates of pemoline.

Cathine

Some trade and other names:

d-norpseudoephedrine

(2) The administrator may except by rule any compound, mixture or preparation containing any substance listed in subsection (1) from the application of all or any part of this article if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant or stimulant effect on the central nervous system.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1998, Act 319, Eff. Oct. 1, 1998;—Am. 2010, Act 171, Eff. Oct. 1, 2010.

Popular name: Act 368

333.7219 Schedule 5; placement of substance.

Sec. 7219. The administrator shall place a substance in schedule 5 if it finds all of the following:

(a) The substance has low potential for abuse relative to the controlled substances listed in schedule 4.

(b) The substance has currently accepted medical use in treatment in the United States.

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule 4 or the incidence of abuse is such that the substance should be dispensed by a practitioner.

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

Constitutionality: The Legislature's delegation to the Board of Pharmacy of the authority to schedule controlled substances in accordance with detailed criteria is not an unlawful delegation of power. People v Turmon, 417 Mich 638; 340 NW2d 620 (1983).

Popular name: Act 368

333.7220 Schedule 5; controlled substances included.

Sec. 7220. (1) The following controlled substances are included in schedule 5:

(a) The following drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

Loperamide

(b) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts of narcotic drugs, which includes 1 or more nonnarcotic active medicinal ingredients in

sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(*i*) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams and not more than 10 milligrams per dosage unit.

(*ii*) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

(*iii*) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

(*iv*) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(*v*) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit.

(c) Except as otherwise provided in this subdivision, ephedrine, a salt of ephedrine, an optical isomer of ephedrine, a salt of an optical isomer of ephedrine, or a compound, mixture, or preparation containing ephedrine, a salt of ephedrine, an optical isomer of ephedrine, or a salt of an optical isomer of ephedrine. However, the following are not included in schedule 5:

(*i*) A product containing ephedrine, a salt of ephedrine, an optical isomer of ephedrine, or a salt of an optical isomer of ephedrine if the drug product may lawfully be sold over the counter without a prescription under federal law, is labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph, is manufactured and distributed for legitimate medical use in a manner that reduces or eliminates the likelihood for abuse, and is not marketed, advertised, or labeled for an indication of stimulation, mental alertness, energy, weight loss, appetite control, or muscle enhancement and if the drug product is 1 of the following:

(A) A solid dosage form, including but not limited to a soft gelatin caplet, that combines as active ingredients not less than 400 milligrams of guaifenesin and not more than 25 milligrams of ephedrine per dose, packaged in blister packs with not more than 2 tablets or caplets per blister.

(B) An anorectal preparation containing not more than 5% ephedrine.

(*ii*) A food product or a dietary supplement containing ephedrine, if the food product or dietary supplement meets all of the following criteria:

(A) It contains, per dosage unit or serving, not more than the lesser of 25 milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States food and drug administration and contains no other controlled substance.

(B) It contains no hydrochloride or sulfate salts of ephedrine alkaloids.

(C) It is packaged with a prominent label securely affixed to each package that states the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of 100 milligrams in a 24-hour period or the maximum recommended dosage or period of use provided in applicable regulations adopted by the United States food and drug administration; and that improper use of the product may be hazardous to a person's health.

(2) Inclusion of the substances described in subsection (1)(c) into schedule 5 does not preclude prosecution for a crime involving those schedule 5 substances under section 17766c.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1999, Act 144, Eff. Jan. 21, 2000.

Popular name: Act 368

333.7227 Substances excluded from schedules of controlled substances; excluded substance as deleterious drug; manufacturing, distributing, or dispensing excluded substance.

Sec. 7227. (1) A nonnarcotic substance that under the federal food, drug and cosmetic act may be lawfully dispensed without a prescription is excluded from all schedules pursuant to section 7208(2). A substance that contains 1 or more controlled substances in a proportion or concentration to vitiate the potential for abuse is excluded.

(2) Substances included in schedule 5 under section 7220(1)(c) are not excluded under subsection (1).

(3) An excluded substance is a deleterious drug and may be manufactured, distributed, or dispensed only by a person who is registered to manufacture, distribute, or dispense a controlled substance under section 7208(2).

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1999, Act 144, Eff. Jan. 21, 2000.

Popular name: Act 368

333.7229 Excepted compound, mixture, or preparation; compliance.

Sec. 7229. A compound, mixture, or preparation containing a depressant or stimulant substance or of similar quantitative composition shown in federal regulations as an excepted compound or which is the same except that it contains a lesser quantity of a controlled substance or other substances which do not have a stimulant, depressant, or hallucinogenic effect, and which is restricted by law to dispensing on prescription is excepted from sections 7212, 7214, 7216, 7218, and 7220. Compliance with federal law respecting an excepted compound is considered compliance with this section.

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

Popular name: Act 368

333.7231 Notice of change in scheduling or rescheduling.

Sec. 7231. The administrator shall notify all registrants under this article, the secretary of the senate, the clerk of the house of representatives, the attorney general, and the director of the department of state police of any change in scheduling or rescheduling not later than 30 days before the change is effective.

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

Popular name: Act 368

PART 73
MANUFACTURE, DISTRIBUTION, AND DISPENSING

333.7301 Rules.

Sec. 7301. The administrator may promulgate rules relating to the licensure and control of the manufacture, distribution, prescribing of controlled substances included in schedule 2, and dispensing of controlled substances in this state.

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

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."

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.

Popular name: Act 368

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

333.7301a Licensing activities subject to certain provisions.

Sec. 7301a. Licensing activities conducted under this part are subject to sections 16201, 16203, 16299, 16303, 16305, 16307, 16309, and 16313 and article 8.

History: Add. 1988, Act 462, Eff. Sept. 1, 1989;—Am. 2006, Act 392, Imd. Eff. Sept. 27, 2006;—Am. 2013, Act 268, Imd. Eff. Dec. 30, 2013.

Compiler's note: The following sections referenced in MCL 333.7301a have been repealed or do not exist: Secs. 16203, 16309, and 16313.

Popular name: Act 368

333.7302 Labeling controlled substances; contents of label; altering, defacing, or removing label.

Sec. 7302. (1) Controlled substances manufactured or distributed in this state shall have affixed upon each package and container in which the substances are contained, a label showing in legible English the name and address of the principal manufacturer or the distributor, and the name, quantity, kind, and form of controlled substance contained in the package or container.

(2) A person, except a practitioner for the lawful purpose of dispensing controlled substances under this article, shall not alter, deface, or remove a label affixed as required in subsection (1).

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

Popular name: Act 368

333.7302a Identification of certain prescription drugs and manufacturer or distributor; descriptive material; national registry of prescription drugs; exemptions; rules; "prescription drug" defined; violation as misdemeanor; penalty.

Sec. 7302a. (1) A prescription drug that is in finished solid oral dosage form shall not be manufactured or distributed in this state after June 1, 1985 unless the drug is clearly and prominently marked or imprinted with

an individual symbol, number, company name, words, letters, marking, national drug code, or a combination of any of the foregoing that identifies the prescription drug and the manufacturer or distributor of the drug.

(2) A person licensed by the administrator under this article to manufacture or distribute prescription drugs shall supply to the department of commerce descriptive material that will identify each current mark or imprint under subsection (1) used by the person who distributes or manufactures the prescription drug.

(3) It is the intent of the legislature that the descriptive material received by the department of commerce pursuant to subsection (2) shall be used in conjunction with similar information from other states by the United States department of health and human services, food and drug administration, or other national agency or organization, to compile a national registry of prescription drugs manufactured or distributed in the United States.

(4) The department of commerce, upon the application of a person who distributes or manufactures a prescription drug, shall exempt a particular prescription drug from the requirements of this section if the department of commerce determines that marking or imprinting the prescription drug is not feasible because of the drug's size, texture, or other unique characteristic.

(5) This section does not apply to a prescription drug that is compounded by a pharmacist licensed under article 15.

(6) The department of commerce may promulgate rules pursuant to the administrative procedures act of 1969, for purposes of implementing and enforcing this section.

(7) As used in this section, "prescription drug" means a prescription drug as defined in section 17708(4).

(8) A person who knowingly or intentionally violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than $25,000.00, or both.

History: Add. 1984, Act 254, Eff. Mar. 29, 1985;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7303 License required; renewal; scope of authority; compliance; additional requirements; persons exempted; waiving or imposing requirement for licensure; separate license for each principal place of business or professional practice; inspection; quarterly report.

Sec. 7303. (1) A person who manufactures, distributes, prescribes, or dispenses a controlled substance in this state or who proposes to engage in the manufacture, distribution, prescribing, or dispensing of a controlled substance in this state shall obtain a license issued by the administrator in accordance with the rules. A person who has been issued a controlled substances license by the administrator under this article and a license under article 15 shall renew the controlled substances license concurrently with the renewal of the license issued under article 15, and for an equal number of years.

(2) A person licensed by the administrator under this article to manufacture, distribute, prescribe, dispense, or conduct research with controlled substances may possess, manufacture, distribute, prescribe, dispense, or conduct research with those substances to the extent authorized by its license and in conformity with the other provisions of this article.

(3) A license issued under this article to manufacture, distribute, prescribe, or dispense pharmaceutical-grade cannabis and the conduct of the licensee is subject to the additional requirements of article 8.

(4) The following persons need not be licensed and may lawfully possess controlled substances or prescription forms under this article:

(a) An agent or employee of a licensed manufacturer, distributor, prescriber, or dispenser of a controlled substance if acting in the usual course of the agent's or employee's business or employment.

(b) A common or contract carrier or warehouseman, or an employee thereof, whose possession of a controlled substance or prescription form is in the usual course of business or employment.

(c) An ultimate user or agent in possession of a controlled substance or prescription form pursuant to a lawful order of a practitioner or in lawful possession of a schedule 5 substance.

(5) The administrator may waive or include by rule the requirement for licensure of certain manufacturers, distributors, prescribers, or dispensers, if it finds the waiver or inclusion is consistent with the public health and safety.

(6) A separate license is required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, or dispenses controlled substances.

(7) As a requisite for licensure, the administrator may inspect the establishment of a licensee or applicant for licensure in accordance with the administrator's rule.

(8) A person licensed under this article to distribute controlled substances shall report to the administrator

on a quarterly basis all schedule 2 controlled substances and those controlled substances designated by the administrator pursuant to this subsection that are sold to licensed practitioners and retail pharmacies. The report shall be in writing and shall include the name of each licensed practitioner and retail pharmacy to whom the controlled substance was distributed. A report under this subsection may be transmitted electronically, if the transmission is ultimately reduced to writing. The administrator shall designate by rule the controlled substances in schedules 3 to 5 to be reported under this subsection.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 174, Imd. Eff. July 7, 1986;—Am. 1988, Act 9, Eff. Aug. 9, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 2013, Act 268, Imd. Eff. Dec. 30, 2013.

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."

Popular name: Act 368

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

333.7303a Licensed prescriber; administering or dispensing controlled substance without separate license; prescriber in bona fide prescriber-patient relationship with patient; follow-up care; use of other controlled substances; recording response; obtaining and reviewing report from electronic system; exceptions; registering with electronic system; records required to be maintained; waiver of requirement under MCL 333.7303.

Sec. 7303a. (1) A prescriber who holds a controlled substances license may administer or dispense a controlled substance listed in schedules 2 to 5 without a separate controlled substances license for those activities.

(2) Except as otherwise provided in rules promulgated under section 16204e and for a patient who is under the care of a hospice, beginning March 31, 2019 or, if rules are promulgated under section 16204e before March 31, 2019, on the date on which rules are promulgated under section 16204e, a licensed prescriber shall not prescribe a controlled substance listed in schedules 2 to 5 unless the prescriber is in a bona fide prescriber-patient relationship with the patient for whom the controlled substance is being prescribed. Except as otherwise provided in this subsection, if a licensed prescriber prescribes a controlled substance under this subsection, the prescriber shall provide follow-up care to the patient to monitor the efficacy of the use of the controlled substance as a treatment of the patient's medical condition. If the licensed prescriber is unable to provide follow-up care, he or she shall refer the patient to the patient's primary care provider for follow-up care or, if the patient does not have a primary care provider, he or she shall refer the patient to another licensed prescriber who is geographically accessible to the patient for follow-up care.

(3) Before prescribing or dispensing a controlled substance to a patient, a licensed prescriber shall ask the patient about other controlled substances the patient may be using. The prescriber shall record the patient's response in the patient's medical or clinical record.

(4) Beginning June 1, 2018, before prescribing or dispensing to a patient a controlled substance in a quantity that exceeds a 3-day supply, a licensed prescriber shall obtain and review a report concerning that patient from the electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances established under section 7333a. This subsection does not apply under any of the following circumstances:

(a) If the dispensing occurs in a hospital or freestanding surgical outpatient facility licensed under article 17 and the controlled substance is administered to the patient in that hospital or facility.

(b) If the patient is an animal as that term is defined in section 18802, the dispensing occurs in a veterinary hospital or clinic and the controlled substance is administered to the patient in that hospital or clinic.

(c) If the controlled substance is prescribed by a licensed prescriber who is a veterinarian and the controlled substance will be dispensed by a pharmacist.

(d) If the patient is under the care of a hospice and the report described in this subsection was obtained and reviewed at the time the patient was admitted to the hospice.

(5) Beginning June 1, 2018, before prescribing or dispensing a controlled substance to a patient, a licensed prescriber shall register with the electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances established under section 7333a.

(6) A licensed prescriber who dispenses controlled substances shall maintain all of the following records separately from other prescription records:

(a) All invoices and other acquisition records for each controlled substance acquired by the prescriber for not less than 5 years after the date the prescriber acquires the controlled substance.

(b) A log of all controlled substances dispensed by the prescriber for not less than 5 years after the date the controlled substance is dispensed.

(c) Records of all other dispositions of controlled substances under the licensee's control for not less than 5

years after the date of the disposition.

(7) The requirement under section 7303 for a license is waived in the following circumstances:

(a) When a controlled substance listed in schedules 2 to 5 is administered on the order of a licensed prescriber by an individual who is licensed under article 15 as a practical nurse or a registered professional nurse.

(b) When methadone or a methadone congener is dispensed on the order of a licensed prescriber in a methadone treatment program licensed under article 6 or when a controlled substance listed in schedules 2 to 5 is dispensed on the order of a licensed prescriber in a hospice rendering emergency care services in a patient's home as described in section 17746 by a registered professional nurse licensed under article 15.

History: Add. 1993, Act 305, Imd. Eff. Dec. 28, 1993;—Am. 2016, Act 379, Eff. Mar. 22, 2017;—Am. 2017, Act 247, Imd. Eff. Dec. 27, 2017;—Am. 2017, Act 248, Imd. Eff. Dec. 27, 2017;—Am. 2017, Act 249, Imd. Eff. Dec. 27, 2017;—Am. 2018, Act 101, Imd. Eff. Apr. 2, 2018;—Am. 2019, Act 43, Imd. Eff. July 8, 2019.

Popular name: Act 368

333.7303b First prescription in single course of treatment for controlled substance containing opioid; issuance to minor by prescriber; requirements; exceptions; talking consent form authorizing adult to consent to minor's medical treatment; form; definitions.

Sec. 7303b. (1) Except as otherwise provided in this section, beginning June 1, 2018, a prescriber shall comply with all of the following before issuing for a minor the first prescription in a single course of treatment for a controlled substance containing an opioid, regardless of whether the prescriber modifies the dosage during the course of treatment:

(a) Discuss all of the following with the minor, and with the minor's parent or guardian or with another adult authorized to consent to the minor's medical treatment:

(*i*) The risks of addiction and overdose associated with the controlled substance.

(*ii*) The increased risk of addiction to a controlled substance to an individual who is suffering from both mental and substance abuse disorders.

(*iii*) The danger of taking a controlled substance containing an opioid with a benzodiazepine, alcohol, or another central nervous system depressant.

(*iv*) Any other information in the patient counseling information section of the label for the controlled substance that is required under 21 CFR 201.57(c)(18).

(b) Obtain the signature of the minor's parent or guardian, or, subject to subsection (3), the signature of another adult authorized to consent to the minor's medical treatment, on a start talking consent form. The prescriber shall include the signed start talking consent form in the minor's medical record.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) If the minor's treatment is associated with or incident to a medical emergency.

(b) If the minor's treatment is associated with or incident to a surgery, regardless of whether the surgery is performed on an inpatient or outpatient basis.

(c) If, in the prescriber's professional judgment, fulfilling the requirements of subsection (1) would be detrimental to the minor's health or safety.

(d) If the minor's treatment is rendered in a hospice as that term is defined in section 20106 or an oncology department of a hospital that is licensed under article 17.

(e) If the prescriber is issuing the prescription for the minor at the time of discharge from a facility described in subdivision (d).

(f) If the consent of the minor's parent or guardian is not legally required for the minor to obtain treatment.

(3) If the individual signing a start talking consent form is another adult authorized to consent to the minor's medical treatment, the prescriber shall not prescribe more than a single, 72-hour supply of the controlled substance described in subsection (1) to the minor.

(4) A start talking consent form must be on a form that is separate from any other document that a prescriber uses to obtain the informed consent for the treatment of a minor and must contain all of the following:

(a) The name and quantity of the controlled substance being prescribed for the minor and the amount of the initial dose.

(b) A statement indicating that a controlled substance is a drug or other substance that the United States Drug Enforcement Administration has identified as having a potential for abuse.

(c) A statement certifying that the prescriber discussed with the minor, and with the minor's parent or guardian or with another adult authorized to consent to the minor's medical treatment, the topics described in subsection (1).

(d) The number of refills, if any, that are authorized by the prescription.

(e) A space for the signature of the minor's parent or guardian, or the signature of another adult authorized to consent to the minor's medical treatment, and a space to indicate the date that the minor's parent or guardian, or another adult authorized to consent to the minor's medical treatment, signed the form.

(5) As used in this section:

(a) "Another adult authorized to consent to the minor's medical treatment" means an adult to whom a minor's parent or guardian has given written authorization to consent to the minor's medical treatment.

(b) "Medical emergency" means a situation that, in the prescriber's good-faith medical judgment, creates an immediate threat of serious risk to the life or physical health of the minor.

(c) "Minor" means an individual under 18 years of age who is not emancipated under section 4 of 1968 PA 293, MCL 722.4.

(d) "Start talking consent form" means the form described in subsection (4).

History: Add. 2017, Act 246, Imd. Eff. Dec. 27, 2017.

Popular name: Act 368

333.7303c Information to be provided before controlled substance containing opioid is prescribed; signature; inclusion of signed form in patient's medical or clinical record; controlled substance prescribed for inpatient use; definitions.

Sec. 7303c. (1) Except as otherwise provided in this section, beginning June 1, 2018, before a controlled substance that is an opioid is prescribed to a patient, a licensed prescriber or another health professional shall provide information on all of the following to the patient or the patient's representative:

(a) The danger of opioid addiction.

(b) How to properly dispose of an expired, unused, or unwanted controlled substance.

(c) That the delivery of a controlled substance is a felony under Michigan law.

(d) If the patient is pregnant or is a female of reproductive age, the short- and long-term effects of exposing a fetus to a controlled substance, including, but not limited to, neonatal abstinence syndrome.

(2) After providing the information described in subsection (1), the licensed prescriber or other health professional shall obtain the signature of the patient or the patient's representative on a form prescribed by the department of health and human services, indicating that the patient or the patient's representative has received the information described in subsection (1). The licensed prescriber or other health professional shall include the signed form in the patient's medical or clinical record.

(3) This section does not apply if the controlled substance described in subsection (1) is prescribed for inpatient use.

(4) As used in this section:

(a) "Health professional" means an individual who is licensed, registered, or otherwise authorized to engage in a health profession under article 15.

(b) "Patient" means an individual who receives health care from the licensed prescriber.

(c) "Patient's representative" means a guardian of a patient, if appointed, or a parent, guardian, or person acting in loco parentis, if the patient is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis.

History: Add. 2017, Act 246, Imd. Eff. Dec. 27, 2017.

Popular name: Act 368

333.7304 Exemptions from licensure.

Sec. 7304. (1) The requirement of licensure is waived for the following persons in the circumstances described in this section:

(a) An officer or employee of the drug enforcement administration while engaged in the course of official duties.

(b) An officer of the United States customs service while engaged in the course of official duties.

(c) An officer or employee of the United States food and drug administration while engaged in the course of official duties.

(d) A federal officer who is lawfully engaged in the enforcement of a federal law relating to controlled substances, drugs, or customs and who is authorized to possess controlled substances in the course of that person's official duties.

(e) An officer or employee of this state, or a political subdivision or agency of this state who is engaged in the enforcement of a state or local law relating to controlled substances and who is authorized to possess controlled substances in the course of that person's official duties.

(2) An official exempted from licensure by this section, when acting in the course of that person's official duties, may possess a controlled substance and may transfer a controlled substance to any other official who is

exempted and who is acting in the course of that person's official duties.

(3) An official exempted by this section may procure a controlled substance in the course of an administrative inspection or investigation or in the course of a criminal investigation involving the person from whom the substance was procured.

(4) A law enforcement officer exempted by this section may distribute a controlled substance to another person in the course of that officer's official duties as a means to detect criminal activity or to conduct a criminal investigation.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1994, Act 221, Eff. Mar. 30, 1995.

Popular name: Act 368

333.7305 Permitting certain persons to apply for license; application upon expiration of existing license.

Sec. 7305. The administrator shall initially permit a person who owns, or operates an establishment engaged in the manufacture, distribution, prescription, or dispensing of a controlled substance before September 30, 1978 and who is licensed by this state to apply for a license pursuant to this article. However, a person who is licensed under existing state law with the administrator or department of commerce is not required to apply for a license pursuant to this article until the expiration of the person's existing license.

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

Popular name: Act 368

333.7306 License to be granted unless inconsistent with public interest; factors in determining public interest; scope of licensure; license to dispense, prescribe, or conduct research with controlled substances in schedules 2 to 5; registration under federal law to conduct research with schedule 1 substances; effect of compliance with federal law as to registration; limitation on licensure.

Sec. 7306. (1) The administrator shall grant a license to an applicant to manufacture or distribute controlled substances included in sections 7212 to 7220, unless the administrator determines that the issuance of that license would be inconsistent with the public interest. In determining the public interest, the administrator shall consider all of the following factors:

(a) Maintenance of effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial channels.

(b) Compliance with applicable state and local law.

(c) A conviction of the applicant under a federal or state law relating to a controlled substance.

(d) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion.

(e) Furnishing by the applicant of false or fraudulent material in an application filed under this article.

(f) Suspension or revocation of the applicant's federal registration to manufacture or distribute controlled substances as authorized by federal law.

(g) Any other factor relevant to and consistent with the public health and safety.

(2) Licensure under subsection (1) does not entitle a licensee to manufacture and distribute controlled substances in schedules 1 or 2 other than those specified in the license.

(3) A practitioner shall be licensed to dispense or prescribe any controlled substances or to conduct research with controlled substances in schedules 2 to 5 if the practitioner is authorized to dispense, prescribe, or conduct research under the laws of this state. The administrator need not require separate licensure under this article for a practitioner engaging in research with nonnarcotic controlled substances in schedules 2 to 5 if the licensee is licensed under this article in another capacity. A practitioner registered under federal law to conduct research with schedule 1 substances may conduct research with schedule 1 substances in this state upon furnishing the administrator evidence of that federal registration.

(4) Compliance by a manufacturer or distributor with the provisions of the federal law as to registration, excluding fees, entitles the manufacturer or distributor to be licensed under this article.

(5) Licensure under subsection (1) does not authorize a licensee to dispense, manufacture, distribute, or prescribe a controlled substance if the dispensing, manufacture, distribution, or prescribing is not for legitimate and professionally recognized therapeutic, scientific, or industrial purposes or is not in the scope of practice of a practitioner-licensee.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 174, Imd. Eff. July 7, 1986;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

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.”

333.7311 Actions by disciplinary subcommittee; grounds; limitation; conviction of felony; placing under seal or seizing controlled substances; disposition of controlled substances; judicial order for sale; deposit of proceeds; forfeiture of controlled substances; notice of orders and forfeitures; voiding license under MCL 333.7306; effect of conviction; applicability of subsection (7).

Sec. 7311. (1) A license under section 7306 to manufacture, distribute, prescribe, or dispense a controlled substance may be denied, suspended, or revoked or a licensee may be fined, reprimanded, ordered to perform community service or make restitution, or placed on probation by the disciplinary subcommittee upon a finding that an applicant for licensure or a licensee is subject to any of the following:

(a) The applicant or licensee has furnished false or fraudulent material information in an application filed under this article.

(b) The applicant's or licensee's federal registration to manufacture, distribute, or dispense controlled substances has been surrendered, suspended, or revoked.

(c) The applicant or licensee has promoted a controlled substance to the general public.

(d) The applicant or licensee is not a practitioner, manufacturer, or distributor.

(e) The applicant or licensee has not maintained effective controls against diversion of controlled substances to other than legitimate and professionally recognized therapeutic, scientific, or industrial uses.

(f) The applicant or licensee is not in compliance with applicable federal, state, and local laws.

(g) The applicant or licensee has manufactured, distributed, or dispensed a controlled substance for other than legitimate or professionally recognized therapeutic, scientific, or industrial purposes or outside the scope of practice of the practitioner-licensee or applicant.

(h) The applicant or licensee has violated or attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired to violate this article or rules of the administrator promulgated under this article.

(2) The disciplinary subcommittee may limit a license under subsection (1) to a particular controlled substance.

(3) A license under section 7306 to manufacture, distribute, prescribe, or dispense a controlled substance shall be denied or revoked by the disciplinary subcommittee if the applicant or licensee has been convicted of a felony under a state or federal law relating to a controlled substance.

(4) If the disciplinary subcommittee suspends or revokes a license or if a license is void under subsection (6), all controlled substances owned or possessed by the licensee at the time of suspension or the effective date of the revocation order may be placed under seal or seized at the discretion of the disciplinary subcommittee. The department shall not dispose of controlled substances under seal or seizure until the time for taking an appeal has elapsed or until all appeals have been concluded, unless a court, upon application therefor, orders the sale of perishable controlled substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final or after a license becomes void under subsection (6) because the licensee's license to practice is revoked under article 15 and that revocation order becomes final, the disciplinary subcommittee may order all controlled substances under seal or seizure to be forfeited to this state.

(5) The disciplinary subcommittee shall promptly notify the bureau of all orders suspending or revoking a license and all forfeitures of controlled substances.

(6) A license under section 7306 to manufacture, distribute, prescribe, or dispense a controlled substance is automatically void if the licensee's license to practice is suspended or revoked under article 15.

(7) Subject to subsection (8), if the administrator or the disciplinary subcommittee finds that an applicant or licensee has been convicted of a misdemeanor or a felony under a state or federal law relating to a controlled substance, the applicant or licensee shall not have a direct financial interest in or be employed by a person who is licensed under this article to manufacture, distribute, prescribe, or dispense a controlled substance in a capacity in which the individual has direct access to controlled substances for a period of not less than 3 years after the date of conviction. An individual who violates this subsection is subject to a civil fine of not more than $25,000.00 in a proceeding in the circuit court.

(8) Subsection (7) applies only to a conviction for a misdemeanor that is directly related to the manufacture, delivery, possession, possession with intent to manufacture or deliver, use, distribution, prescription, or dispensing of a controlled substance. Subsection (7) does not apply to a conviction for a misdemeanor based upon an unintentional error or omission involving a clerical or record-keeping function.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 174, Imd. Eff. July 7, 1986;—Am. 1988, Act 29, Eff. Aug. 26, 1988;—Am. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

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."

Popular name: Act 368

Administrative rules: R 338.493a et seq. and R 338.3101 et seq. of the Michigan Administrative Code.

333.7314 Denial, suspension, revocation, or limitation of license; order to show cause; service of order; conduct of proceedings; effect of proceeding on existing license; suspension of license on finding of imminent danger; duration of suspension; applicability of subsection (1).

Sec. 7314. (1) Before the disciplinary subcommittee suspends or revokes or limits a license or denies an application or a renewal of a license, the disciplinary subcommittee shall serve on the applicant or licensee an order to show cause why the application or license should not be denied, limited, revoked, or suspended, or why the renewal should not be denied. The order to show cause shall contain a statement of the basis for the order and shall call upon the applicant or licensee to appear before the disciplinary subcommittee or a hearings examiner at a time and place not less than 30 days after the date of service of the order. A show cause order for a denial of renewal of a license shall be served not later than 30 days before expiration of the license. The proceedings described in this subsection shall be conducted without regard to any criminal prosecution or other proceeding. A proceeding to deny renewal of a license does not abate the existing license, which remains in effect pending the outcome of the administrative hearing.

(2) Pursuant to procedural guidelines adopted by the department, the department may suspend a license, without an order to show cause, simultaneously with the institution of proceedings under section 7311 or if renewal of licensure is refused, if the department finds that there is an imminent danger to the public health or safety that warrants this action. The suspension shall continue in effect until conclusion of the proceedings, including judicial review, unless sooner withdrawn by a hearings examiner or dissolved by a court of competent jurisdiction.

(3) Subsection (1) does not apply to the suspension or revocation of a license by the administrator pursuant to section 7311(6).

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1986, Act 174, Imd. Eff. July 7, 1987;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

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."

Popular name: Act 368

333.7315 Reinstatement of license; application; hearing.

Sec. 7315. (1) An individual whose license is limited, suspended, or revoked under this part may apply to the board for a reinstatement of a revoked or suspended license or for removal of a limitation as to a particular controlled substance.

(2) In the case of a revoked license, an applicant shall not apply for reinstatement before the expiration of 5 years after the effective date of the revocation. The department shall return an application for reinstatement received before the expiration of the 5-year period.

(3) The department shall provide an opportunity for a hearing before final rejection of an application for reinstatement.

History: Add. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7316 Reinstatement of license; good moral character; public interest; disciplinary or corrective measure.

Sec. 7316. The administrator may reinstate a revoked or suspended license to an individual whose license has been suspended or revoked under this article or remove a limitation as to a particular controlled substance if, after a hearing, the administrator is satisfied that the applicant is of good moral character, has met the criteria in the rules promulgated under section 16245(6), and should be permitted in the public interest to have his or her license reinstated or the limitation removed. As a condition of reinstatement, the disciplinary subcommittee, upon the recommendation of the administrator, may impose a disciplinary or corrective measure authorized under this article. In determining the public interest, the administrator shall consider the factors set forth in section 7306(1)(a) to (g).

History: Add. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7321 Records; inventories; annual inventory; retention.

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

(2) Beginning May 1, 1989, and annually thereafter, each person licensed under this article to manufacture, distribute, prescribe, or dispense controlled substances shall inventory all schedule 2 to 5 controlled substances possessed by the person at the time of the inventory. A person described in this subsection may conduct the annual inventory required under this subsection not more than 30 days before May 1, but shall conduct the inventory not later than 60 days after May 1. A person described in this subsection shall retain the inventory required under this subsection for not less than 2 years after the date of the inventory's creation and shall make the inventory available for inspection by the department at the request of the department.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 245, Eff. Sept. 1, 1988;—Am. 2016, Act 383, Eff. Mar. 28, 2017.

Popular name: Act 368

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

333.7331 Authority to purchase schedule 1 or 2 controlled substance; order form.

Sec. 7331. (1) Only a practitioner who holds a license under this article to prescribe or dispense controlled substances may purchase from a licensed manufacturer or distributor a schedule 1 or 2 controlled substance. The authority granted under this subsection to purchase a schedule 1 or 2 controlled substance is not assignable or transferable.

(2) A purchase of a schedule 1 or 2 controlled substance under subsection (1) shall be made only pursuant to an order form which is in compliance with federal law.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 10, Eff. Aug. 9, 1988.

Popular name: Act 368

333.7333 "Good faith" defined; dispensing controlled substance included in schedule 2; prescription form; electronic transmission under MCL 333.17754a; emergency; filling and refilling prescription; dispensing controlled substance included in schedule 3, 4, or 5; requirements and use of written prescription; class B dealer; animal control shelter or animal protection shelter; limited permit; administration of commercially prepared, premixed solution of sodium pentobarbital or animal tranquilizer; liability of veterinarian; "animal tranquilizer" and "class B dealer" defined.

Sec. 7333. (1) As used in this section, "good faith" means the prescribing or dispensing of a controlled substance by a practitioner licensed under section 7303 in the regular course of professional treatment to or for an individual who is under treatment by the practitioner for a pathology or condition other than that individual's physical or psychological dependence on or addiction to a controlled substance, except as provided in this article. Application of good faith to a pharmacist means the dispensing of a controlled substance pursuant to a prescriber's order which, in the professional judgment of the pharmacist, is lawful. The pharmacist shall be guided by nationally accepted professional standards including, but not limited to, all of the following, in making the judgment:

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

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

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

(d) Unusual dosages.

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

(2) Except as otherwise provided in this section, a practitioner, in good faith, may dispense a controlled substance included in schedule 2 that is a prescription drug as determined under section 503(b) of the federal food, drug, and cosmetic act, 21 USC 353, or section 17708, on receipt of either of the following:

(a) A prescription of a practitioner licensed under section 7303 on a prescription form. More than 1 prescription for a controlled substance included in schedule 2 may be included on a single prescription form.

(b) A prescription that is electronically transmitted under section 17754a.

(3) In an emergency situation, as described in R 338.3165 of the Michigan Administrative Code, a controlled substance included in schedule 2 may be dispensed on the oral prescription of a practitioner if the prescribing practitioner promptly fills out a prescription form and forwards the prescription form to the dispensing pharmacy within 7 days after the oral prescription is issued. A prescription for a controlled substance included in schedule 2 must not be filled more than 90 days after the date on which the prescription was issued. A pharmacist, consistent with federal law and regulations on the partial filling of a controlled

substance included in schedule 2, may partially fill in increments a prescription for a controlled substance included in schedule 2.

(4) A practitioner, in good faith, may dispense a controlled substance included in schedule 3, 4, or 5 that is a prescription drug as determined under section 503(b) of the federal food, drug, and cosmetic act, 21 USC 353, or section 17708, on receipt of any of the following:

(a) A prescription on a prescription form.

(b) An oral prescription of a practitioner.

(c) A prescription that is electronically transmitted under section 17754a.

(5) A prescription for a controlled substance included in schedule 3 or 4 must not be filled or refilled without specific refill instructions noted by the prescriber. A prescription for a controlled substance included in schedule 3 or 4 must not be filled or refilled later than 6 months after the date of the prescription or be refilled more than 5 times, unless renewed by the prescriber in accordance with rules promulgated by the administrator.

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

(7) If a prescription is required under this section, the prescription must contain the quantity of the controlled substance prescribed in both written and numerical terms. A prescription is in compliance with this subsection if, in addition to containing the quantity of the controlled substance prescribed in written terms, it contains preprinted numbers representative of the quantity of the controlled substance prescribed next to which is a box or line the prescriber may check.

(8) A prescribing practitioner shall not use a prescription form for a purpose other than prescribing. A prescribing practitioner shall not postdate a prescription form that contains a prescription for a controlled substance. Until the date on which section 17754a applies, a prescriber may transmit a prescription by facsimile of a printed prescription form and by electronic transmission of a printed prescription form, if not prohibited by federal law. If, with the patient's consent, a prescription is electronically transmitted under this subsection, it must be transmitted directly to a pharmacy of the patient's choice by the prescriber or the prescriber's authorized agent, and the data must not be altered, modified, or extracted in the transmission process.

(9) Notwithstanding subsections (1) to (6), a class B dealer may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital to perform euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the class B dealer does all of the following:

(a) Applies to the administrator for a permit in accordance with rules promulgated under this part. The application must contain the name of the individual in charge of the day-to-day operations of the class B dealer's facilities and the name of the individual responsible for designating employees who will be performing euthanasia on animals pursuant to this act.

(b) Complies with the rules promulgated by the administrator for the storage, handling, and use of a commercially prepared, premixed solution of sodium pentobarbital to perform euthanasia on animals. The class B dealer shall maintain a record of use and shall make the record available for inspection by the department of licensing and regulatory affairs, the department of agriculture and rural development, and the United States Department of Agriculture.

(c) Subject to subdivision (d), certifies that the class B dealer or an employee of the class B dealer has received, and can document completion of, a minimum of 16 hours of training, including at least 12 hours of content training and at least 4 hours of practical training, in the use of a commercially prepared, premixed solution of sodium pentobarbital and an animal tranquilizer to perform euthanasia on animals from a training program approved by the state veterinarian, in consultation with the Michigan board of veterinary medicine, and given by a licensed veterinarian pursuant to rules promulgated by the administrator. The training described in this subdivision must comply with the American Veterinary Medical Association's guidelines for the euthanasia of animals.

(d) Until December 31, 2021, ensures that the class B dealer or an employee of the class B dealer who received, and can document the completion of, the 8 hours of training required immediately before May 22, 2018 only administers a commercially prepared, premixed solution of sodium pentobarbital to perform euthanasia on the animals described in this subsection. Beginning January 1, 2022, the individuals described in this subdivision must have received, and be able to document the completion of, the training described in subdivision (c) to administer a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer to perform euthanasia on the animals described in this subsection.

(e) Certifies that only an individual described in subdivision (c) or (d) or an individual otherwise permitted to use a controlled substance pursuant to this article will administer the commercially prepared, premixed

solution of sodium pentobarbital or an animal tranquilizer according to written procedures established by the class B dealer.

(f) Beginning January 1, 2022, certifies that the individual in charge of the day-to-day operations of the class B dealer's facilities has received, and can document the completion of, the training described in subdivision (c).

(g) Complies with all state and federal laws, rules, and regulations regarding the acquisition, use, and security of controlled substances.

(10) Notwithstanding subsections (1) to (6), an animal control shelter or animal protection shelter registered with the department of agriculture and rural development pursuant to 1969 PA 287, MCL 287.331 to 287.340, may acquire a limited permit only for the purpose of buying, possessing, and administering a commercially prepared, premixed solution of sodium pentobarbital, or an animal tranquilizer, to use exclusively as an adjunct in the process of performing euthanasia on injured, sick, homeless, or unwanted domestic pets and other animals, if the animal control shelter or animal protection shelter does all of the following:

(a) Applies to the administrator for a permit in accordance with rules promulgated under this part. The application must contain the name of the individual in charge of the day-to-day operations of the animal control shelter or animal protection shelter and the name of the individual responsible for designating employees who will be performing euthanasia on animals pursuant to this act.

(b) Complies with the rules promulgated by the administrator for the storage, handling, and use of a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer to perform euthanasia on animals. The animal control shelter or animal protection shelter shall maintain a record of use and make the record available for inspection by the department of licensing and regulatory affairs and the department of agriculture and rural development.

(c) Subject to subdivision (d), certifies that an employee of the animal control shelter or animal protection shelter has received, and can document completion of, a minimum of 16 hours of training, including at least 12 hours of content training and at least 4 hours of practical training, in the use of a commercially prepared, premixed solution of sodium pentobarbital and an animal tranquilizer to perform euthanasia on animals from a training program approved by the state veterinarian, in consultation with the Michigan board of veterinary medicine, and given by a licensed veterinarian pursuant to rules promulgated by the administrator. The training described in this subdivision must comply with the American Veterinary Medical Association's guidelines for the euthanasia of animals.

(d) Until December 31, 2021, ensures that an employee of the animal control shelter or animal protection shelter who received, and can document the completion of, the training required immediately before May 22, 2018 only administers a commercially prepared solution of xylazine hydrochloride or a commercially prepared, premixed solution of sodium pentobarbital to perform euthanasia on the animals described in this subsection in accordance with his or her training. Beginning January 1, 2022, the employee described in this subdivision must have received, and be able to document the completion of, the training described in subdivision (c) to administer a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer to perform euthanasia on the animals described in this subsection.

(e) Certifies that only an individual described in subdivision (c) or (d) or an individual otherwise permitted to use a controlled substance pursuant to this article will administer a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer according to written procedures established by the animal control shelter or animal protection shelter.

(f) Beginning January 1, 2022, certifies that the individual in charge of the day-to-day operations of the animal control shelter or animal protection shelter has received, and can document the completion of, the training described in subdivision (c).

(g) Complies with all state and federal laws and regulations regarding the acquisition, use, and security of controlled substances.

(11) The application described in subsection (9) or (10) must include the names and addresses of all individuals employed by the animal control shelter or animal protection shelter or class B dealer who have been trained as described in subsection (9)(c), (d), and (f) or (10)(c), (d), and (f) and the name of the veterinarian who trained them. The list of names and addresses must be updated every 6 months.

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

(a) An individual trained as described in subsection (9)(c), (d), or (f) or (10)(c), (d), or (f) has been hired by the animal control shelter or animal protection shelter or class B dealer.

(b) An individual employed by the animal control shelter or animal protection shelter or class B dealer has been trained as described in subsection (9)(c) or (f) or (10)(c) or (f).

(13) A veterinarian, including a veterinarian who trains individuals as described in subsection (9)(c), (d), or (f), or (10)(c), (d), or (f), is not civilly or criminally liable for the use of a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer by an animal control shelter or animal protection shelter or a class B dealer, unless the veterinarian is employed by or under contract with the animal control shelter or animal protection shelter or class B dealer and the terms of the veterinarian's employment or the contract require the veterinarian to be responsible for the use or administration of the commercially prepared, premixed solution of sodium pentobarbital or animal tranquilizer.

(14) A person shall not knowingly use or permit the use of a commercially prepared, premixed solution of sodium pentobarbital or an animal tranquilizer in violation of this section.

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

(16) Notwithstanding subsections (1) to (6), an animal control shelter registered with the department of agriculture and rural development pursuant to 1969 PA 287, MCL 287.331 to 287.340, may acquire a limited permit only for the purpose of buying, possessing, and administering an animal tranquilizer to sedate or immobilize an animal running at large that is dangerous or difficult to capture, if the animal control shelter does all of the following:

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

(b) Complies with the rules promulgated by the administrator for the storage, handling, and use of an animal tranquilizer. The animal control shelter shall maintain a record of use and shall make the record available for inspection by the department of licensing and regulatory affairs and the department of agriculture and rural development.

(c) Subject to subdivision (d), certifies that an employee of the animal control shelter has received, and can document completion of, both of the following in the following order:

(*i*) The training described in subsection (10)(c).

(*ii*) A minimum of 16 hours of training, including at least 12 hours of content training and at least 4 hours of practical training, in the use of animal tranquilizers to sedate or immobilize the animals described in this subsection from a training program approved by the state veterinarian, in consultation with the Michigan board of veterinary medicine, and given by a licensed veterinarian pursuant to rules promulgated by the administrator.

(d) Until December 31, 2021, ensures that an employee of the animal control shelter who received, and can document the completion of, the training required immediately before May 22, 2018 only administers a commercially prepared solution of xylazine hydrochloride to sedate or immobilize the animals described in this subsection. Beginning January 1, 2022, the employee described in this subdivision must have received, and be able to document the completion of, the training described in subdivision (c) to administer an animal tranquilizer to perform euthanasia on the animals described in this subsection.

(e) Certifies that only an individual described in subdivision (c) or (d) or an individual otherwise permitted to use a controlled substance pursuant to this article will administer an animal tranquilizer according to written procedures established by the animal control shelter.

(f) Beginning January 1, 2022, certifies that the individual in charge of the day-to-day operations of the animal control shelter has received, and can document the completion of, the training described in subdivision (c).

(g) Complies with all state and federal laws, rules, and regulations regarding the acquisition, use, and security of controlled substances.

(17) The application described in subsection (16) must include the names and business addresses of all individuals employed by the animal control shelter who have been trained as described in subsection (16)(c), (d), and (f) and must include documented proof of the training. The list of names and business addresses must be updated every 6 months.

(18) If an animal control shelter issued a permit pursuant to subsection (16) does not have in its employ an individual trained as described in subsection (16)(c) or (d) and (16)(f), the animal control shelter shall immediately notify the administrator and shall cease to administer an animal tranquilizer for the purposes

described in subsection (16) until the administrator is notified that 1 of the following has occurred:

(a) An individual trained as described in subsection (16)(c), (d), or (f) has been hired by the animal control shelter.

(b) An individual employed by the animal control shelter has been trained as described in subsection (16)(c) or (f).

(19) A veterinarian, including a veterinarian who trains individuals as described in subsection (16)(c), (d), or (f), is not civilly or criminally liable for the use of an animal tranquilizer by an animal control shelter unless the veterinarian is employed by or under contract with the animal control shelter and the terms of the veterinarian's employment or the contract require the veterinarian to be responsible for the use or administration of an animal tranquilizer.

(20) As used in this section:

(a) "Animal tranquilizer" means a commercially prepared solution of xylazine hydrochloride, a commercially prepared solution of ketamine, or a commercially prepared compound containing tiletamine and zolazepam.

(b) "Class B dealer" means a class B dealer licensed by the United States Department of Agriculture pursuant to the animal welfare act, 7 USC 2131 to 2160 and the department of agriculture and rural development pursuant to 1969 PA 224, MCL 287.381 to 287.395.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1980, Act 414, Imd. Eff. Jan. 11, 1981;—Am. 1988, Act 28, Eff. Aug. 26, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1988;—Am. 1988, Act 240, Imd. Eff. July 11, 1988;—Am. 1989, Act 143, Imd. Eff. June 29, 1989;—Am. 1990, Act 30, Eff. Mar. 28, 1991;—Am. 1991, Act 186, Imd. Eff. Dec. 27, 1991;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 1993, Act 138, Imd. Eff. Aug. 2, 1993;—Am. 2001, Act 231, Eff. Jan. 6, 2003;—Am. 2006, Act 451, Imd. Eff. Dec. 14, 2006;—Am. 2010, Act 3, Imd. Eff. Feb. 4, 2010;—Am. 2017, Act 251, Eff. Mar. 27, 2018;—Am. 2018, Act 34, Eff. May 22, 2018;—Am. 2020, Act 136, Imd. Eff. July 8, 2020.

Compiler's note: Enacting section 2 of Act 231 of 2001 provides:

"Enacting section 2. Section 7333 of the public health code, 1978 PA 368, MCL 333.7333, as amended by this amendatory act, takes effect upon promulgation of the rules required under section 7333a(1) of the public health code, 1978 PA 368, MCL 333.7333a, as added by this amendatory act, 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, as added by this amendatory act, 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, as added by this amendatory act, 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.

333.7333a Electronic monitoring system; definitions.

Sec. 7333a. (1) The department shall establish, by rule, an electronic system for monitoring schedule 2, 3, 4, and 5 controlled substances dispensed in this state by veterinarians, and by pharmacists and dispensing prescribers licensed under part 177 or dispensed to an address in this state by a pharmacy licensed in this state. The rules must provide an appropriate electronic format for the reporting of data including, but not limited to, patient identifiers, and the name of the controlled substance dispensed, the date of dispensing, the quantity dispensed, the prescriber, and the dispenser. The department shall require a veterinarian, pharmacist, or dispensing prescriber to utilize the electronic data transmittal process developed by the department or the department's contractor. The department shall not require a veterinarian, pharmacist, or dispensing prescriber to pay a new fee dedicated to the operation of the electronic monitoring system or to incur any additional costs solely related to the transmission of data to the department. The dispensing of a controlled substance in any of the following is exempt from the reporting requirements:

(a) A hospital that is licensed under article 17 that administers the controlled substance to an individual who is an inpatient.

(b) A health facility or agency licensed under article 17 if the controlled substance is dispensed by a dispensing prescriber in a quantity adequate to treat the patient for not more than 48 hours.

(c) A veterinary hospital or clinic that administers the controlled substance to an animal that is an inpatient.

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

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person that is authorized to prescribe, administer, or dispense controlled

substances.

(b) An employee or agent of the department.

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

(d) A state-operated Medicaid program.

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

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

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

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

(i) The health care payment or benefit provider for the purposes of ensuring patient safety and investigating fraud and abuse.

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

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

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

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

(a) Cost, benefits, and barriers.

(b) Overall cost-benefit analysis.

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

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

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

(9) The data and any report containing any patient identifiers obtained from the data are not public records and are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(10) The department may issue a written request to a health care payment or benefit provider to determine if the provider has accessed the electronic monitoring system as provided in subsection (2)(i) in the previous calendar year and, if so, to determine the number of inquiries the provider made in the previous calendar year and any other information the department requests in relation to the provider's access to the electronic monitoring system. A health care payment or benefit provider shall respond to the written request on or before the March 31 following the request. The department shall collaborate with health care payment or benefit providers to develop a reasonable request and reporting form for use under this subsection.

(11) Before dispensing or prescribing buprenorphine, or a drug containing buprenorphine or methadone, to a patient in a substance use disorder program, a prescriber shall obtain and review data concerning that patient from the department under subsection (2). A prescriber dispensing buprenorphine, or a drug containing buprenorphine or methadone, to a patient in a substance use disorder program shall also report the data required in subsection (1), if federal law does not prohibit the reporting of data concerning the patient, to the department. As used in this subsection:

(a) "Approved service program" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

(b) "Substance use disorder program" means a program as that term is defined in section 260 of the mental health code, 1974 PA 258, MCL 330.1260, an approved service program, a nonregulated substance use disorder services program, a federal certified substance use disorder services program, or a federally regulated substance use disorder services program.

(12) R 338.3162e of the Michigan Administrative Code is rescinded.

(13) As used in this section:

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

(b) "Health care payment or benefit provider" means a person that provides health benefits, coverage, or insurance in this state, including a health insurance company, a nonprofit health care corporation, a health maintenance organization, a multiple employer welfare arrangement, a Medicaid contracted health plan, or any other person providing a plan of health benefits, coverage, or insurance subject to state insurance regulation.

History: Add. 2001, Act 231, Imd. Eff. Jan. 3, 2002;—Am. 2011, Act 108, Imd. Eff. July 20, 2011;—Am. 2012, Act 44, Imd. Eff. Mar. 7, 2012;—Am. 2016, Act 383, Eff. Mar. 28, 2017;—Am. 2017, Act 252, Eff. Mar. 27, 2018.

Popular name: Act 368

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

333.7333b Treatment of patient for acute pain; prescription for opioid; limitation; "acute pain" defined.

Sec. 7333b. (1) Beginning July 1, 2018, if a prescriber is treating a patient for acute pain, the prescriber shall not prescribe the patient more than a 7-day supply of an opioid within a 7-day period.

(2) As used in this section, "acute pain" means pain that is the normal, predicted physiological response to a noxious chemical or a thermal or mechanical stimulus and is typically associated with invasive procedures, trauma, and disease and usually lasts for a limited amount of time.

History: Add. 2017, Act 251, Eff. Mar. 27, 2018.

Popular name: Act 368

333.7334 Repealed. 2001, Act 231, Eff. Jan. 6, 2003.

Compiler's note: The repealed section pertained to official prescription form.

Popular name: Act 368

333.7335 Repealed. 2013, Act 268, Imd. Eff. Dec. 30, 2013.

Compiler's note: Former MCL 333.7335, pertaining to marihuana controlled substances therapeutic research program, expired November 1, 1982, pursuant to Act 125 of 1979.

The repealed section pertained to marihuana controlled substances therapeutic research program.

Popular name: Act 368

333.7336 Repealed. 2013, Act 268, Imd. Eff. Dec. 30, 2013.

Compiler's note: Former MCL 333.7336, pertaining to patient qualification review board and certification of designated pharmacies for participation in marihuana distribution, expired November 1, 1982, pursuant to Act 125 of 1979.

The repealed section pertained to patient qualification review board.

Popular name: Act 368

333.7339 Dispensing, selling, or giving product to individual less than 18 years of age; violation as misdemeanor; penalty.

Sec. 7339. (1) A person shall not dispense, sell, or otherwise give a product described in section 7220(1)(c)(*ii*) to an individual less than 18 years of age. This section does not apply to a physician or pharmacist who prescribes, dispenses, administers, or delivers a product described in section 7220(1)(c)(*ii*) to an individual less than 18 years of age, to a parent or guardian of an individual less than 18 years of age who delivers the product to the individual, or to a person authorized by the individual's parent or legal guardian who dispenses or delivers the product to the individual.

(2) In the course of selling, offering for sale, or otherwise distributing a product described in section 7220(1)(c)(*ii*), a person shall not advertise or represent in any manner that the product causes euphoria, ecstasy, a "buzz" or "high", or an altered mental state, heightens sexual performance, or, because it contains ephedrine alkaloids, increases muscle mass.

(3) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

History: Add. 1999, Act 144, Eff. Jan. 21, 2000.

Popular name: Act 368

333.7340 Selling, distributing, delivering, or furnishing product containing ephedrine or pseudoephedrine; prohibition; exceptions; violation as felony; penalty.

Sec. 7340. (1) A person shall not sell, distribute, deliver, or otherwise furnish a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine to an individual if the sale is transacted through use of the mail, internet, telephone, or other electronic means.

(2) This section does not apply to any of the following:

(a) A pediatric product primarily intended for administration to children under 12 years of age according to label instructions.

(b) A product containing pseudoephedrine that is in a liquid form if pseudoephedrine is not the only active ingredient.

(c) A product that the state board of pharmacy, upon application of the manufacturer or certification by the United States drug enforcement administration as inconvertible, exempts from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

(d) A person who dispenses a product described in subsection (1) pursuant to a prescription.

(e) A person who, in the course of his or her business, sells or distributes products described in subsection (1) to either of the following:

(*i*) A person licensed by this state to manufacture, deliver, dispense, or possess with intent to manufacture or deliver a controlled substance, prescription drug, or other drug.

(*ii*) A person who orders those products described in subsection (1) for retail sale pursuant to a license issued under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(f) A manufacturer or distributor who donates product samples to a nonprofit charitable organization that has tax-exempt status pursuant to section 501(c)(3) of the internal revenue code of 1986, a licensed practitioner, or a governmental entity.

(3) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

History: Add. 2006, Act 261, Eff. Oct. 1, 2006.

Popular name: Act 368

333.7340a Submission of information to NPLEx.

Sec. 7340a. (1) Before completing a sale under section 17766f, a retailer shall electronically submit the required information to the national precursor log exchange (NPLEx) administered by the national association of drug diversion investigators (NADDI). A retailer shall not be required to pay a fee for using the NPLEx system.

(2) If a retailer selling a nonprescription product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain a written log or an alternative electronic record-keeping mechanism until such time as the retailer is able to comply with the electronic sales tracking requirement.

(3) NADDI shall provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in this state as authorized by state and federal law.

(4) The system described in subsection (1) shall be capable of generating a stop sale alert notifying the retailer that the person is prohibited from purchasing a nonprescription product containing ephedrine or pseudoephedrine due to a conviction reported under the methamphetamine abuse reporting act or that completing the sale will result in the seller's or purchaser's violating the quantity limits set forth in section 17766f. Except as otherwise provided by law, the seller shall not complete the sale if the system generates a stop sale alert. The system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized shall be logged by the system.

(5) A person's failure to comply with the record-keeping or sales verification requirements of this section does not create a civil cause of action for damages to any other person arising out of that failure absent a direct and proximate cause, and the person is immune from civil liability for any damages arising out of that failure.

(6) A person who violates this section is guilty of a misdemeanor punishable by a fine of not more than

$500.00.

History: Add. 2011, Act 84, Imd. Eff. July 15, 2011;—Am. 2014, Act 275, Eff. Jan. 1, 2015.

Popular name: Act 368

333.7340c Soliciting or attempting to solicit another person to obtain ephedrine or pseudoephedrine; violation; penalty; other violation; report to state police; definitions.

Sec. 7340c. (1) A person shall not solicit another person to purchase or otherwise obtain any amount of ephedrine or pseudoephedrine knowing that it is to be used for the purpose of illegally manufacturing methamphetamine.

(2) Except as provided in subsection (3), a person who violates this section is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both.

(3) A person who attempts to violate subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(4) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law committed by the person while violating this section.

(5) If a person is convicted of violating this section, the court shall report the violation to the department of state police.

(6) For purposes of this section:

(a) "Ephedrine" includes the salts and isomers and salts of isomers of ephedrine.

(b) "Pseudoephedrine" includes the salts and isomers and salts of isomers of pseudoephedrine.

History: Add. 2014, Act 217, Eff. Jan. 1, 2015;—Am. 2016, Act 125, Eff. Aug. 23, 2016.

Popular name: Act 368

333.7341 Definitions; factors in determining imitation controlled substance; prohibited conduct; violation; civil fine; misdemeanor; penalty; default in payment of civil fine or costs; collection; prohibited advertisement or solicitation; violation as misdemeanor; penalty; section inapplicable to certain persons; violation as felony; penalty.

Sec. 7341. (1) As used in this section:

(a) "Distribute" means the actual, constructive, or attempted transfer, sale, delivery, or dispensing from one person to another of an imitation controlled substance.

(b) "Imitation controlled substance" means a substance that is not a controlled substance or is not a drug for which a prescription is required under federal or state law, which by dosage unit appearance including color, shape, size, or markings, and/or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. However, this subsection does not apply to a drug that is not a controlled substance if it was marketed before the controlled substance that it physically resembles. An imitation controlled substance does not include a placebo or registered investigational drug that was manufactured, distributed, possessed, or delivered in the ordinary course of professional practice or research. All of the following factors shall be considered in determining whether a substance is an imitation controlled substance:

(*i*) Whether the substance was approved by the federal food and drug administration for over-the-counter sales and was sold in the federal food and drug administration approved packaging along with the federal food and drug administration approved labeling information.

(*ii*) Any statements made by an owner or another person in control of the substance concerning the nature, use, or effect of the substance.

(*iii*) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(*iv*) Whether the owner or another person in control of the substance has any prior convictions under state or federal law related to controlled substances or fraud.

(*v*) The proximity of the substance to controlled substances.

(*vi*) Whether the consideration tendered in exchange for the substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, if applicable, the price at which the over-the-counter substances of like chemical composition sell.

(c) "Manufacture" means the production, preparation, compounding, conversion, encapsulating, packaging, repackaging, labeling, relabeling, or processing of an imitation controlled substance, directly or indirectly.

(2) In addition to all logically relevant factors, the following factors as related to "representations made" shall be considered in determining whether a substance is an imitation controlled substance:

(a) Any express or implied representation made that the nature of the substance or its use or effect is similar to that of a controlled substance.

(b) Any express or implied representation made that the substance may be resold for an amount considerably in excess of the reasonable value of the composite ingredients and the cost of processing.

(c) Any express or implied representation made that the substance is a controlled substance.

(d) Any express or implied representation that the substance is of a nature or appearance that the recipient of the substance will be able to distribute the substance as a controlled substance.

(e) That the substance's package, label, or name is substantially similar to that of a controlled substance.

(f) The proximity of the substance to a controlled substance.

(g) That the physical appearance of the substance is substantially identical to a specific controlled substance, including any numbers or codes thereon, and the shape, size, markings, or color.

(3) Except as provided in subsection (7), a person shall not manufacture, distribute, or possess with intent to distribute, an imitation controlled substance.

(4) A person shall not use, or possess with intent to use, an imitation controlled substance, except under the direction of a person authorized pursuant to subsection (7). A person who violates this subsection is subject to a civil fine of not more than $100.00 and costs. Upon a second or subsequent violation of this subsection, a person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than $100.00, or both.

(5) A default in the payment of a civil fine or costs ordered under subsection (4) or an installment thereof may be collected by any means authorized for the enforcement of a judgment under chapter 40 or chapter 60 of the revised judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065 and 600.6001 to 600.6098.

(6) A person shall not place an advertisement or solicitation in this state to be distributed by any electronic media in this state, or place an advertisement or solicitation in this state in any newspaper, magazine, handbill, or other publication; or post or distribute an advertisement or solicitation in any public place in this state, knowing or having reason to know that the purpose of the advertisement or solicitation is to promote the distribution of an imitation controlled substance. A person who violates this subsection is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than $5,000.00, or both.

(7) This section does not apply to any person who is authorized by the administrator or the federal food and drug administration to manufacture, distribute, prescribe, or possess an imitation controlled substance for use as a placebo for legitimate medical, therapeutic, or research purposes.

(8) Except as provided in subsections (4) and (6), a person who violates this section is guilty of a felony, punishable by imprisonment for not more than 2 years, or by a fine of not more than $10,000.00, or both.

History: Add. 1984, Act 347, Eff. Mar. 29, 1985;—Am. 2012, Act 180, Imd. Eff. June 19, 2012.

Popular name: Act 368

PART 74
OFFENSES AND PENALTIES

333.7401 Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; "plant" defined.

Sec. 7401. (1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

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

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

(*i*) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than $1,000,000.00, or both.

(*ii*) Which is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony and punishable by imprisonment for not more than 30 years or a fine of not more than $500,000.00, or both.

(*iii*) Which is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $250,000.00, or both.

(*iv*) Which is in an amount less than 50 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

(b) Either of the following:

(*i*) A substance described in section 7212(1)(h) or 7214(c)(*ii*) is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

(*ii*) Any other controlled substance classified in schedule 1, 2, or 3, except marihuana or a substance listed in section 7212(1)(d), is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $10,000.00, or both.

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

(d) Marihuana, a mixture containing marihuana, or a substance listed in section 7212(1)(d) is guilty of a felony punishable as follows:

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

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

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

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

(f) A prescription form or a counterfeit prescription form is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $5,000.00, or both.

(3) A term of imprisonment imposed under subsection (2)(a) may be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

(4) If an individual was sentenced to lifetime probation under subsection (2)(a)(*iv*) as it existed before March 1, 2003 and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(5) As used in this section, "plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1987, Act 275, Eff. Mar. 30, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1989, Act 143, Eff. Sept. 28, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 1994, Act 221, Eff. Mar. 30, 1995;—Am. 1996, Act 249, Eff. Jan. 1, 1997;—Am. 1998, Act 319, Eff. Oct. 1, 1998;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2001, Act 236, Eff. Jan. 6, 2003;—Am. 2002, Act 665, Eff. Mar. 1, 2003;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 352, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 183, Eff. July 1, 2012;—Am. 2016, Act 548, Eff. Apr. 10, 2017.

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.

Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon 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

333.7401a Delivery of controlled substance; violation of MCL 750.520b to 750.520e or MCL 750.520g.

Sec. 7401a. (1) A person who, without an individual's consent, delivers a controlled substance or a substance described in section 7401b or causes a controlled substance or a substance described in section 7401b to be delivered to that individual to commit or attempt to commit a violation of section 520b, 520c,

520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, against that individual is guilty of a felony punishable by imprisonment for not more than 20 years.

(2) A conviction or sentence under this section does not prohibit a conviction or sentence for any other crime arising out of the same transaction.

(3) This section applies regardless of whether the person is convicted of a violation or attempted violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

History: Add. 1998, Act 319, Eff. Oct. 1, 1998;—Am. 2000, Act 302, Eff. Jan. 1, 2001.

Popular name: Act 368

Popular name: Date Rape

Popular name: Date Rape Drug

333.7401b Manufacture, delivery, or possession of gamma-butyrolactone prohibited; exception; violation; definitions.

Sec. 7401b. (1) A person shall not do any of the following:

(a) Manufacture, deliver, or possess with intent to manufacture or deliver gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(b) Knowingly or intentionally possess gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(2) Subsection (1) does not prohibit manufacturing, delivering, possessing with intent to manufacture or deliver, or possessing gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone for use in a commercial application and not for human consumption. It is an affirmative defense to a prosecution under this section that the person manufactured, delivered, possessed with intent to manufacture or deliver, or possessed gamma-butyrolactone or the material, compound, mixture, or preparation containing gamma-butyrolactone in compliance with this subsection.

(3) A person who violates this section is guilty of a crime as follows:

(a) For a violation of subsection (1)(a), the person is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than $5,000.00, or both.

(b) For a violation of subsection (1)(b), the person is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(4) As used in this section:

(a) "Commercial application" means as an ingredient in a lawful product, for use in the process of manufacturing a lawful product, or for lawful use as a solvent.

(b) "Deliver" means the actual, constructive, or attempted transfer from 1 person to another of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, whether or not there is an agency relationship.

(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, 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.

(d) "Person" means that term as defined in section 1106 or a governmental entity.

History: Add. 2000, Act 302, Eff. Jan. 1, 2001.

Popular name: Act 368

Popular name: Date Rape

Popular name: Date Rape Drug

333.7401c Manufacture of controlled substance; prohibited acts; violation as felony; exceptions; imposition of consecutive terms; court order to pay response activity costs; definitions.

Sec. 7401c. (1) A person shall not do any of the following:

(a) Own, possess, or use a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of section 7401 or a

counterfeit substance or a controlled substance analogue in violation of section 7402.

(c) Provide any chemical or laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or laboratory equipment for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(2) A person who violates this section is guilty of a felony punishable as follows:

(a) Except as provided in subdivisions (b) to (f), by imprisonment for not more than 10 years or a fine of not more than $100,000.00, or both.

(b) If the violation is committed in the presence of a minor, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.

(c) If the violation involves the unlawful generation, treatment, storage, or disposal of a hazardous waste, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.

(d) If the violation occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship, by imprisonment for not more than 20 years or a fine of not more than $100,000.00, or both.

(e) If the violation involves the possession, placement, or use of a firearm or any other device designed or intended to be used to injure another person, by imprisonment for not more than 25 years or a fine of not more than $100,000.00, or both.

(f) If the violation involves or is intended to involve the manufacture of a substance described in section 7214(c)(*ii*), by imprisonment for not more than 20 years or a fine of not more than $25,000.00, or both.

(3) This section does not apply to a violation involving only a substance described in section 7214(a)(*iv*) or marihuana, or both.

(4) This section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

(5) A term of imprisonment imposed under this section may be served consecutively to any other term of imprisonment imposed for a violation of law arising out of the same transaction.

(6) The court may, as a condition of sentence, order a person convicted of a violation punishable under subsection (2)(c) to pay response activity costs arising out of the violation.

(7) As used in this section:

(a) "Hazardous waste" means that term as defined in section 11103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11103.

(b) "Laboratory equipment" means any equipment, device, or container used or intended to be used in the process of manufacturing a controlled substance, counterfeit substance, or controlled substance analogue.

(c) "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. Manufacture does not include any of the following:

(*i*) The packaging or repackaging of the substance or labeling or relabeling of its container.

(*ii*) The preparation or compounding of a controlled substance by any of the following:

(A) 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.

(B) 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.

(d) "Minor" means an individual less than 18 years of age.

(e) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(f) "School property" means that term as defined in section 7410.

(g) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

History: Add. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2003, Act 310, Eff. Apr. 1, 2004.

Popular name: Act 368

333.7402 Creating, manufacturing, delivering, or possessing with intent to deliver counterfeit substance or controlled substance analogue intended for human consumption; applicability of section and certain federal provisions; violations; penalties.

Sec. 7402. (1) Except as authorized by this article, a person shall not create, manufacture, deliver, or possess with intent to deliver a counterfeit substance or a controlled substance analogue intended for human

consumption. This section does not apply to a person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. 355. For purposes of this section, section 505 of the federal food, drug, and cosmetic act shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

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

(a) A counterfeit substance classified in schedule 1 or 2 which is either a narcotic drug or a drug described in section 7212(1)(h) or 7214(a)(*iv*) or (c)(*ii*), is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both.

(b) Any other counterfeit substance classified in schedule 1, 2, or 3, is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than $5,000.00, or both.

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

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

(e) A controlled substance analogue, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $250,000.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2012, Act 183, Eff. July 1, 2012.

Popular name: Act 368

333.7403 Knowingly or intentionally possessing controlled substance, controlled substance analogue, or prescription form; violations; penalties; individuals exempt from violation; notification of parent, guardian, or custodian of minor; other criminal charges; discharge from probation; definitions.

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

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

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

(*i*) That is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than $1,000,000.00, or both.

(*ii*) That is in an amount of 450 grams or more, but less than 1,000 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 30 years or a fine of not more than $500,000.00, or both.

(*iii*) That is in an amount of 50 grams or more, but less than 450 grams, of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $250,000.00, or both.

(*iv*) That is in an amount of 25 grams or more, but less than 50 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $25,000.00, or both.

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

(b) Either of the following:

(*i*) A substance described in section 7212(1)(h) or 7214(c)(*ii*) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than $15,000.00, or both.

(*ii*) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subparagraph (*i*) or subdivision (a), (c), or (d), or a controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(d) Marihuana or a substance listed in section 7212(1)(d) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(e) A prescription form is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(3) The following individuals are not in violation of this section:

(a) An individual who seeks medical assistance for himself or herself or who requires medical assistance and is presented for assistance by another individual if he or she is incapacitated because of a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this section is obtained as a result of the individual's seeking or being presented for medical assistance.

(b) An individual who in good faith attempts to procure medical assistance for another individual or who accompanies another individual who requires medical assistance for a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this section is obtained as a result of the individual's attempting to procure medical assistance for another individual or as a result of the individual's accompanying another individual who requires medical assistance to a health facility or agency.

(4) A health facility or agency shall develop a process for notification of the parent or parents, guardian, or custodian of a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, and who voluntarily presents himself or herself, or is presented by another individual if he or she is incapacitated, to a health facility or agency for emergency medical treatment as provided in subsection (3). A health facility or agency shall not provide notification to a parent or parents, guardian, or custodian under this subsection for nonemergency treatment without obtaining the minor's consent.

(5) The exemption from prosecution under this section provided in subsection (3) does not prevent the investigation, arrest, charging, or prosecution of an individual for any other violation of the laws of this state or be grounds for suppression of evidence in the prosecution of any other criminal charges.

(6) If an individual was sentenced to lifetime probation under subsection (2)(a)(*iv*) as it existed before March 1, 2003 and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(7) As used in this section:

(a) "Drug overdose" means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, that is the result of consumption or use of a controlled substance or a controlled substance analogue or a substance with which the controlled substance or controlled substance analogue was combined, or that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) "Seeks medical assistance" means reporting a drug overdose or other medical emergency to law enforcement, the 9-1-1 system, a poison control center, or a medical provider, or assisting someone in reporting a drug overdose or other medical emergency.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 47, Eff. Mar. 30, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1989, Act 143, Eff. Sept. 28, 1989;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 1994, Act 221, Eff. Mar. 30, 1995;—Am. 1996, Act 249, Eff. Jan. 1, 1997;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2001, Act 236, Eff. Jan. 6, 2003;—Am. 2002, Act 665, Eff. Mar. 1, 2003;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 169, Eff. Oct. 1, 2010;—Am. 2010, Act 352, Imd. Eff. Dec. 22, 2010;—Am. 2012, Act 183, Eff. July 1, 2012;—Am. 2015, Act 220, Eff. Mar. 15, 2016;—Am. 2016, Act 307, Eff. Jan. 4, 2017.

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- "severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ... " -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. Harmelin v Michigan, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

In People v Bullock, 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court held that the Michigan Constitution prohibits cruel or unusual punishment while the Eighth Amendment to the US Constitution bars only punishment that is both cruel and unusual. Basing its decision on the textual difference, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine is so grossly disproportionate as to be cruel or unusual, the result being that those portions of the statutes denying parole consideration are struck down.

Compiler's note: Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon 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

333.7403a Fraudulently obtaining controlled substance or prescription from health care provider; certain privileges inapplicable to released or available medical records or information; immunity from civil or administrative liability; violation; penalty; probation; screening and assessment by bureau of substance abuse and addiction services; other violations; "health care provider" defined.

Sec. 7403a. (1) A person shall not fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider.

(2) The following privileges do not apply to medical records or information released or made available under subsection (1):

(a) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) The dentist-patient privilege created in section 16648.

(c) Any other health professional-patient privilege created or recognized by law.

(3) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1419, an individual who in good faith provides access to medical records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

(4) A person who violates this section is guilty of a crime as follows:

(a) Except as provided in subsection (5), the person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

(5) The court may place a person who has not previously been convicted of violating this section on probation subject to the terms and conditions set forth in section 7411.

(6) The court may order any person convicted of violating this section to undergo screening and assessment by a person or agency designated by the bureau of substance abuse and addiction services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under this section, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program shall be considered a violation of the terms of the probation.

(7) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of this section.

(8) As used in this section, "health care provider" means that term as defined in section 9206.

History: Add. 2010, Act 354, Imd. Eff. Dec. 22, 2010.

Popular name: Act 368

333.7404 Use of controlled substance or controlled substance analogue; violations; penalties; individuals exempt from violation; notification of parent, guardian, or custodian of minor; other criminal charges; definitions.

Sec. 7404. (1) A person shall not use a controlled substance or controlled substance analogue unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

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

(a) A controlled substance classified in schedule 1 or 2 as a narcotic drug or a drug described in section 7212(1)(h) or 7214(a)(*iv*) or (c)(*ii*) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $2,000.00, or both.

(b) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (c), or (d), or a controlled substance analogue, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(c) Lysergic acid diethylamide, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $500.00, or both.

(d) Marihuana, catha edulis, salvia divinorum, or a substance described in section 7212(1)(d) or (i) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $100.00, or both.

(3) The following individuals are not in violation of this section:

(a) An individual who seeks medical assistance for himself or herself or who requires medical assistance and is presented for assistance by another individual if he or she is incapacitated because of a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this section is obtained as a result of the individual's seeking or being presented for medical assistance.

(b) An individual who in good faith attempts to procure medical assistance for another individual or who accompanies another individual who requires medical assistance for a drug overdose or other perceived medical emergency arising from the use of a controlled substance or a controlled substance analogue that he or she possesses or possessed in an amount sufficient only for personal use and the evidence of his or her violation of this section is obtained as a result of the individual's attempting to procure medical assistance for another individual or as a result of the individual's accompanying another individual who requires medical assistance to a health facility or agency.

(4) A health facility or agency shall develop a process for notification of the parent or parents, guardian, or custodian of a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, and who voluntarily presents himself or herself, or is presented by another individual if he or she is incapacitated, to a health facility or agency for emergency medical treatment as provided in subsection (3). A health facility or agency shall not provide notification to a parent or parents, guardian, or custodian under this subsection for nonemergency treatment without obtaining the minor's consent.

(5) The exemption from prosecution under this section provided in subsection (3) does not prevent the investigation, arrest, charging, or prosecution of an individual for any other violation of the laws of this state, or be grounds for suppression of evidence in the prosecution of any other criminal charges.

(6) As used in this section:

(a) "Drug overdose" means a condition including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, that is the result of consumption or use of a controlled substance or a controlled substance analogue or a substance with which the controlled substance or controlled substance analogue was combined, or that a layperson would reasonably believe to be a drug overdose that requires medical assistance.

(b) "Seeks medical assistance" means reporting a drug overdose or other medical emergency to law enforcement, the 9-1-1 system, a poison control center, or a medical provider, or assisting someone in reporting a drug overdose or other medical emergency.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1994, Act 38, Eff. June 1, 1994;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2002, Act 710, Eff. Apr. 1, 2003;—Am. 2010, Act 169, Eff. Oct. 1, 2010;—Am. 2012, Act 183, Eff. July 1, 2012;—Am. 2015, Act 220, Eff. Mar. 15, 2016;—Am. 2016, Act 308, Eff. Jan. 4, 2017.

Popular name: Act 368

333.7405 Prohibited conduct; violation; penalties.

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

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

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

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

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

violation of this article.

(e) If the person is a practitioner, dispense a controlled substance under a prescription written and signed; written or created in an electronic format, signed, and transmitted by facsimile; or transmitted electronically or by other means of communication by a physician prescriber, dentist prescriber, or veterinarian prescriber licensed to practice in another state, unless the prescription is issued by a physician prescriber, dentist prescriber, or veterinarian prescriber who is authorized under the laws of that state to practice dentistry, medicine, osteopathic medicine and surgery, or veterinary medicine and to prescribe controlled substances.

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1997, Act 153, Eff. Mar. 31, 1998;—Am. 2004, Act 536, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 672, Imd. Eff. Jan. 10, 2007;—Am. 2009, Act 150, Imd. Eff. Nov. 19, 2009;—Am. 2011, Act 155, Imd. Eff. Sept. 27, 2011;—Am. 2012, Act 209, Imd. Eff. June 27, 2012;—Am. 2016, Act 49, Eff. June 13, 2016.

Compiler's note: Enacting section 1 of Act 49 of 2016 provides:

"Enacting section 1. Section 16349 of the public health code, 1978 PA 368, MCL 333.16349, as amended by this amendatory act, applies to licensing fees required to be paid after December 31, 2018."

Popular name: Act 368

Administrative rules: R 338.493a et seq. and R 338.3101 et seq. of the Michigan Administrative Code.

333.7406 Violation of MCL 333.7405; penalty.

Sec. 7406. A person who violates section 7405 may be punished by a civil fine of not more than $25,000.00 in a proceeding in the circuit court. However, if the violation is prosecuted by a criminal indictment alleging that the violation was committed knowingly or intentionally, and the trier of the fact specifically finds that the violation was committed knowingly or intentionally, the person is guilty of a misdemeanor, punishable by imprisonment for not more than 2 years, or a fine of not more than $25,000.00, or both.

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

Popular name: Act 368

333.7407 Prohibited conduct; violation as felony; penalty.

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

(a) Distribute as a licensee a controlled substance classified in schedule 1 or 2, except pursuant to an order form as required by section 7331.

(b) Use in the course of the manufacture or distribution of a controlled substance a license number that is fictitious, revoked, suspended, or issued to another person.

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

(d) Furnish false or fraudulent material information in, or omit any material information from, an application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article.

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

(f) Possess counterfeit prescription forms, except as an agent of government while engaged in the enforcement of this part.

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

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

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 30, Eff. Aug. 26, 1988;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1993, Act 80, Eff. Apr. 1, 1994;—Am. 2001, Act 236, Eff. Jan. 6, 2003.

Compiler's note: Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon 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

333.7407a Attempt to violate or knowingly or intentionally solicit, induce, or intimidate another person to violate part; penalty.

Sec. 7407a. (1) A person shall not attempt to violate this part.

(2) A person shall not knowingly or intentionally solicit, induce, or intimidate another person to violate this part.

(3) Except as otherwise provided in section 7416, a person who violates this section is guilty of a crime punishable by the penalty for the crime he or she attempted to commit, or by the penalty for the crime he or she solicited, induced, or intimidated another person to commit.

History: Add. 1994, Act 220, Eff. Mar. 30, 1995.

Popular name: Act 368

333.7408 Penalty cumulative.

Sec. 7408. A penalty imposed for violation of this article is in addition to, and not in lieu of, a civil or administrative penalty or sanction otherwise authorized by law.

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

Popular name: Act 368

333.7408a Licensing sanctions.

Sec. 7408a. (1) Except as otherwise provided in subsection (3), before imposing sentence or entering a juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or of a local ordinance that prohibits conduct prohibited under this part, the court may order the individual to undergo screening and assessment by a person or agency as designated by a department-designated community mental health entity or a community mental health services program under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. The individual shall pay for the costs of the screening and assessment services.

(2) Except as otherwise provided in subsection (3), as part of the sentence or juvenile disposition for an attempt to violate, a conspiracy to violate, or a violation of this part or of a local ordinance that prohibits conduct prohibited under this part, the court may order the individual to do 1 or both of the following:

(a) Perform service to the community for not more than 90 days. An individual ordered to perform service to the community under this subdivision shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the individual's activities in that service.

(b) Participate in and successfully complete 1 or more appropriate rehabilitative programs. The individual shall pay for the costs of the rehabilitative services.

(3) Subsections (1) and (2) do not apply to an individual who is not eligible for probation under chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1 to 771.14a.

(4) As used in this section:

(a) "Juvenile disposition" means either of the following:

(*i*) A finding of juvenile delinquency under 18 USC 5031 to 5043.

(*ii*) The entry of a judgment or order of disposition by a court of another state that states or is based on a finding that a juvenile violated a law of another state that would have been a criminal offense if committed by an adult in that state.

(b) "Law of another state" means a law or ordinance enacted by another state or by a local unit of government in another state.

History: Add. 1993, Act 361, Eff. Sept. 1, 1994;—Am. 1999, Act 74, Eff. Oct. 1, 1999;—Am. 1999, Act 144, Eff. Jan. 21, 2000;—Am. 2012, Act 501, Eff. Jan. 1, 2013;—Am. 2020, Act 380, Eff. Oct. 1, 2021.

Compiler's note: Enacting section 2 of Act 380 of 2020 provides:

"Enacting section 2. This amendatory act does not take effect unless both of the following occur:

(a) House Concurrent Resolution No. 29 of the 100th Legislature is adopted by a majority of the members elected and serving in each house of the legislature.

(b) The governor submits a certification to the United States Secretary of Transportation stating both of the following:

(*i*) The governor is opposed to the enactment or enforcement of a law requiring driver license suspension for drug offenses as set forth in 23 USC 159(a)(3)(A).

(*ii*) Both houses of the legislature have adopted a concurrent resolution expressing their opposition to the enactment or enforcement of

this federal mandate in accordance with 23 USC 159."

On September 24, 2020, the House adopted House Concurrent Resolution No. 29 and on December 10, 2020, the Senate adopted House Concurrent Resolution No. 29. And, on January 11, 2021, the United States Department of Transportation Division Office received the certification from the Governor regarding the requirements of 23 U.S.C. 159 and attached copy of the House Concurrent Resolution.

Popular name: Act 368

333.7409 Conviction or acquittal under federal law or law of other state as bar to prosecution.

Sec. 7409. If a violation of this article is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

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

Popular name: Act 368

333.7410 Violations by individual 18 years of age or over who violates MCL 333.7401; distribution of marihuana; penalties; definitions.

Sec. 7410. (1) Except as otherwise provided in subsections (2) and (3), an individual 18 years of age or over who violates section 7401(2)(a)(*iv*) by delivering or distributing a controlled substance listed in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(*iv*) to an individual under 18 years of age who is at least 3 years the deliverer's or distributor's junior may be punished by the fine authorized by section 7401(2)(a)(*iv*) or by a term of imprisonment of not less than 1 year nor more than twice that authorized by section 7401(2)(a)(*iv*), or both. An individual 18 years of age or over who violates section 7401 or 7401b by delivering or distributing any other controlled substance listed in schedules 1 to 5 or gamma-butyrolactone to an individual under 18 years of age who is at least 3 years the distributor's junior may be punished by the fine authorized by section 7401(2)(b), (c), or (d) or 7401b, or by a term of imprisonment not more than twice that authorized by section 7401(2)(b), (c), or (d) or 7401b, or both.

(2) An individual 18 years of age or over who violates section 7401(2)(a)(*iv*) by delivering a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(*iv*) to another person on or within 1,000 feet of school property or a library shall be punished, subject to subsection (5), by a term of imprisonment of not less than 2 years or more than 3 times that authorized by section 7401(2)(a)(*iv*) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7401(2)(a)(*iv*).

(3) An individual 18 years of age or over who violates section 7401(2)(a)(*iv*) by possessing with intent to deliver to another person on or within 1,000 feet of school property or a library a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(*iv*) shall be punished, subject to subsection (5), by a term of imprisonment of not less than 2 years or more than twice that authorized by section 7401(2)(a)(*iv*) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7401(2)(a)(*iv*).

(4) An individual 18 years of age or over who violates section 7401b or 7403(2)(a)(*v*), (b), (c), or (d) by possessing gamma-butyrolactone or a controlled substance on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7401b or 7403(2)(a)(*v*), (b), (c), or (d).

(5) The court may depart from the minimum term of imprisonment authorized under subsection (2) or (3) if the court finds on the record that there are substantial and compelling reasons to do so.

(6) An individual 18 years of age or over who violates section 7401 by manufacturing methamphetamine as that term is described in section 7214(c)(*ii*) on or within 1,000 feet of school property or a library shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7401(2)(b)(*i*).

(7) A person who distributes marihuana without remuneration and not to further commercial distribution and who does not violate subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both, unless the distribution is in accordance with the federal law or the law of this state.

(8) As used in this section:

(a) "Library" means a library that is established by the state; a county, city, township, village, school district, or other local unit of government or authority or combination of local units of government and authorities; a community college district; a college or university; or any private library open to the public.

(b) "School property" means a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational,

or parochial school, except those buildings used primarily for adult education or college extension courses.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 12, Eff. June 1, 1988;—Am. 1994, Act 174, Eff. Sept. 1, 1994;—Am. 1999, Act 188, Imd. Eff. Nov. 24, 1999;—Am. 2000, Act 302, Eff. Jan. 1, 2001;—Am. 2006, Act 216, Imd. Eff. June 26, 2006;—Am. 2006, Act 552, Eff. Mar. 30, 2007;—Am. 2016, Act 128, Eff. Aug. 23, 2016.

Popular name: Act 368

333.7410a Delivery or intent to deliver controlled substance in or within public or private park; term of imprisonment; definitions.

Sec. 7410a. (1) An individual 18 years of age or over who does any of the following may be punished by a term of imprisonment of not more than 2 years:

(a) Violates section 7401(2)(a)(*iv*) or (2)(b)(*i*) or section 7401b by delivering a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(b) Violates section 7401(2)(a)(*iv*) or (2)(b)(*i*) or section 7401b by possessing with intent to deliver a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(c) Violates section 7403(2)(a)(*v*), (b), (c), or (d) or section 7401b by possessing a controlled substance or gamma-butyrolactone in or within 1,000 feet of a public park or private park.

(d) Violates section 7401c within 1,000 feet of a public park or private park.

(2) The term of imprisonment authorized under subsection (1) is in addition to the term of imprisonment authorized for the violation of section 7401(2)(a)(*iv*) or (2)(b)(*i*), section 7401b, section 7401c, or section 7403(2)(a)(*v*), (b), (c), or (d).

(3) As used in this section:

(a) "Private park" means real property owned or maintained by a private individual or entity and that is open to the general public or local residents for recreation or amusement.

(b) "Public park" means real property owned or maintained by this state or a political subdivision of this state that is designated by this state or by that political subdivision as a public park.

History: Add. 1998, Act 261, Eff. Oct. 1, 1998;—Am. 2000, Act 302, Eff. Jan. 1, 2001;—Am. 2000, Act 314, Eff. Jan. 1, 2001;—Am. 2006, Act 217, Imd. Eff. June 26, 2006.

Popular name: Act 368

333.7411 Possession or use of controlled substance or imitation controlled substance; probation; terms and conditions; violation; discharge and dismissal; deferral of proceedings; nonpublic record of arrest, court proceedings, and disposition; nonpublic record open to certain individuals and entities; purposes; course of instruction or rehabilitation program; conviction of second violation; screening and assessment; costs.

Sec. 7411. (1) When an individual who has not previously been convicted of an offense under this article or under any statute of the United States or of any state relating to narcotic drugs, coca leaves, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 7403(2)(a)(*v*), 7403(2)(b), (c), or (d), or of use of a controlled substance under section 7404, or possession or use of an imitation controlled substance under section 7341 for a second time, the court, without entering a judgment of guilt with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that shall include, but are not limited to, payment of a probation supervision fee as prescribed in section 3c of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3c. The terms and conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1084. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and, except as otherwise provided by law, is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under section 7413. There may be only 1 discharge and dismissal under this section as to an individual.

(2) All court proceedings under this section shall be open to the public. Except as provided in subsection (3), if the record of proceedings as to the defendant is deferred under this section, the record of proceedings during the period of deferral shall be closed to public inspection.

(3) Unless the court enters a judgment of guilt under this section, the department of state police shall retain a nonpublic record of the arrest, court proceedings, and disposition of the criminal charge under this section.

However, the nonpublic record shall be open to the following individuals and entities for the purposes noted:

(a) The courts of this state, law enforcement personnel, the department of corrections, and prosecuting attorneys for use only in the performance of their duties or to determine whether an employee of the court, law enforcement agency, department of corrections, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, law enforcement agency, department of corrections, or prosecutor's office.

(b) The courts of this state, law enforcement personnel, and prosecuting attorneys for the purpose of showing either of the following:

(*i*) That a defendant has already once availed himself or herself of this section.

(*ii*) Determining whether the defendant in a criminal action is eligible for discharge and dismissal of proceedings by a drug treatment court under section 1076 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

(c) The department of human services for enforcing child protection laws and vulnerable adult protection laws or ascertaining the preemployment criminal history of any individual who will be engaged in the enforcement of child protection laws or vulnerable adult protection laws.

(d) The Michigan commission on law enforcement standards created in section 3 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.603, as follows:

(*i*) The court placed the individual on probation after March 25, 2002.

(*ii*) If, at the time of the request, the individual is seeking licensure as a law enforcement officer under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for licensure as provided in that act.

(*iii*) If the individual is licensed or certified as a law enforcement officer under the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615, the Michigan commission on law enforcement standards may use the record to determine whether the license or certificate may be revoked as provided in that act.

(*iv*) If the individual is seeking admission to a law enforcement training academy, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for admission to the academy as provided in the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(*v*) If the individual is seeking a waiver from the law enforcement officer minimum standards regarding training requirements, the Michigan commission on law enforcement standards may use the record to determine whether the individual meets the requirements for the waiver as provided in the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.615.

(4) For purposes of this section, a person subjected to a civil fine for a first violation of section 7341(4) shall not be considered to have previously been convicted of an offense under this article.

(5) Except as provided in subsection (6), if an individual is convicted of a violation of this article, other than a violation of section 7401(2)(a)(*i*) to (*iv*) or section 7403(2)(a)(*i*) to (*iv*), the court as part of the sentence, during the period of confinement or the period of probation, or both, may require the individual to attend a course of instruction or rehabilitation program approved by the department on the medical, psychological, and social effects of the misuse of drugs. The court may order the individual to pay a fee, as approved by the director, for the instruction or program. Failure to complete the instruction or program is a violation of the terms of probation.

(6) If an individual is convicted of a second violation of section 7341(4), before imposing sentence under subsection (1), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence imposed under subsection (1), the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services. Failure to complete a program is a violation of the terms of the probation.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1984, Act 347, Eff. Mar. 29, 1985;—Am. 1988, Act 144, Imd. Eff. June 6, 1988;—Am. 1993, Act 169, Eff. Sept. 30, 1993;—Am. 2002, Act 79, Imd. Eff. Mar. 25, 2002;—Am. 2004, Act 225, Eff. Jan. 1, 2005;—Am. 2012, Act 549, Eff. Apr. 1, 2013;—Am. 2013, Act 223, Eff. Jan. 1, 2014;—Am. 2016, Act 291, Eff. Jan. 2, 2017.

Popular name: Act 368

333.7413 Conviction of second or subsequent violation; penalty.

Sec. 7413. (1) Except as otherwise provided in subsection (2) an individual convicted of a second or

subsequent offense under this article may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both.

(2) An individual convicted of a second or subsequent offense under section 7410(2) or (3) must be punished, subject to subsection (3), by a term of imprisonment of not less than 5 years nor more than twice that authorized under section 7410(2) or (3) and, in addition, may be punished by a fine of not more than 3 times that authorized by section 7410(2) or (3); and is not eligible for probation or suspension of sentence during the term of imprisonment.

(3) The court may depart from the minimum term of imprisonment authorized under subsection (2) if the court finds on the record that there are substantial and compelling reasons to do so.

(4) For purposes of subsection (1), an offense is considered a second or subsequent offense, if, before conviction of the offense, the offender has at any time been convicted under this article or under any statute of the United States or of any state relating to a narcotic drug, marihuana, depressant, stimulant, or hallucinogenic drug.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 12, Eff. June 1, 1988;—Am. 1988, Act 144, Imd. Eff. June 6, 1988;—Am. 2017, Act 266, Eff. Mar. 28, 2018.

Popular name: Act 368

333.7415 Dismissal of case; reduction of charge; plea of guilty, guilty but mentally ill, or nolo contendere.

Sec. 7415. (1) After the arraignment of a defendant on a warrant charging the defendant with the commission of any of the offenses specified in section 7401(2)(a)(*i*) or (*ii*) or 7403(2)(a)(*i*) or (*ii*), or with conspiracy to commit an offense specified in section 7401(2)(a)(*i*) or (*ii*) or 7403(2)(a)(*i*) or (*ii*), the examining magistrate shall not dismiss the case upon motion of the prosecuting attorney unless the dismissal is with prejudice, nor shall the examining magistrate permit the prosecuting attorney to reduce the charge if it appears to the examining magistrate at the conclusion of the preliminary examination that 1 or more of the offenses set forth in this subsection was committed and that there is probable cause for charging the defendant with a violation of 1 or more of the offenses.

(2) At or after the arraignment of a defendant on an indictment or information charging the defendant with the commission of any of the offenses specified in section 7401(2)(a)(*i*) or (*ii*) or 7403(2)(a)(*i*) or (*ii*), or with conspiracy to commit an offense specified in section 7401(2)(a)(*i*) or (*ii*) or 7403(2)(a)(*i*) or (*ii*), the court in which the indictment or information is filed shall not dismiss the case upon motion of the prosecuting attorney unless the dismissal is with prejudice, and the court shall not accept a plea of guilty, guilty but mentally ill, or nolo contendere unless, with the consent of the prosecuting attorney on the record, the defendant enters a plea of guilty, guilty but mentally ill, or nolo contendere to not less than 1 of the following felonies:

(a) An offense described in section 7401(2)(a)(*i*), (*ii*), (*iii*), or (*iv*).

(b) An offense described in section 7403(2)(a)(*i*), (*ii*), (*iii*), or (*iv*).

(c) Conspiracy to commit an offense described in subdivision (a) or (b).

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1988, Act 144, Imd. Eff. June 6, 1988.

Popular name: Act 368

333.7416 Recruiting, inducing, soliciting, or coercing minor to commit felony; penalties; exception.

Sec. 7416. (1) A person 17 years of age or over who recruits, induces, solicits, or coerces a minor less than 17 years of age to commit or attempt to commit any act that would be a felony under this part if committed by an adult is guilty of a felony and may be punished by a fine of not more than the fine authorized by this part for an adult who commits such an act, and shall be punished, subject to subsection (3), as follows:

(a) Except as provided in subdivision (b), by imprisonment for not less than 1/2 of the maximum term of imprisonment authorized by this part for an adult who commits such an act and not more than the maximum term of imprisonment authorized by this part for an adult who commits such an act.

(b) If the act to be committed or attempted by the minor is a violation of section 7401(2)(a)(*i*), by imprisonment for life.

(2) A person subject to a sentence under subsection (1) shall not be subject to a delayed sentence or a suspended sentence and shall not be eligible for probation.

(3) The court may depart from a minimum term of imprisonment authorized under subsection (1)(a) or (b) if the court finds on the record that there are substantial and compelling reasons to do so.

(4) Subsection (1)(a) does not apply to an act that is a violation of section 7401(2)(d) and that involves the manufacture, delivery, or possession with intent to deliver of marihuana. This section applies whether or not the person 17 years of age or older knew or had reason to know the age of the minor less than 17 years of age.

History: Add. 1988, Act 17, Eff. June 1, 1988;—Am. 1995, Act 95, Eff. Aug. 1, 1995.

Popular name: Act 368

333.7417 Product producing same or similar effect as scheduled ingredient; sale or offer to sell prohibited; violation; penalty; "named product" defined.

Sec. 7417. (1) A person who knows that a named product contains or previously contained an ingredient that was designated to be a schedule 1 controlled substance shall not sell or offer to sell any other product while representing that it contains an ingredient that produces the same or a substantially similar physiological or psychological effect as that scheduled ingredient. This subsection does not apply to a product approved by the federal food and drug administration.

(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $20,000.00, or both.

(3) As used in this section, "named product" means either of the following:

(a) A product having a designated brand name.

(b) A product having a street or common name with application sufficient to identify the product as a specific product within this state or within a local unit of government.

History: Add. 2012, Act 183, Eff. July 1, 2012.

Popular name: Act 368

333.7421 Opioid-related overdose fatalities; report.

Sec. 7421. By February 1 each year, the department of community health shall ascertain, document, and publish a report on the number, trends, patterns, and risk factors related to opioid-related overdose fatalities that occurred in this state in the preceding calendar year. The department shall include in the report information on interventions that would be effective in reducing the rate of fatal or nonfatal opioid-related overdoses in this state.

History: Add. 2014, Act 311, Imd. Eff. Oct. 14, 2014.

Popular name: Act 368

333.7422 Compliance with MCL 333.17744b or MCL 333.17744e; prescribing, dispensing, possessing, or administering opioid antagonist; person not in violation of article.

Sec. 7422. A person that complies with section 17744b or 17744e is not in violation of this article with regard to the prescribing, dispensing, possessing, or administering an opioid antagonist as authorized in either of those sections.

History: Add. 2014, Act 313, Imd. Eff. Oct. 14, 2014;—Am. 2016, Act 383, Eff. Mar. 28, 2017.

Popular name: Act 368

333.7423 Compliance with MCL 333.21418 not a violation of article.

Sec. 7423. The delivery of a controlled substance under section 21418 for the purpose of disposing of the controlled substance is not a violation of this article.

History: Add. 2018, Act 396, Eff. Mar. 19, 2019.

Popular name: Act 368

333.7451 “Drug paraphernalia” defined.

Sec. 7451. As used in sections 7453 to 7461 and section 7521, "drug paraphernalia" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting; propagating; cultivating; growing; harvesting; manufacturing; compounding; converting; producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance; including, but not limited to, all of the following:

(a) An isomerization device specifically designed for use in increasing the potency of any species of plant which plant is a controlled substance.

(b) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.

(c) A weight scale or balance specifically designed for use in weighing or measuring a controlled substance.

(d) A diluent or adulterant, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose, and lactose, specifically designed for use with a controlled substance.

(e) A separation gin or sifter specifically designed for use in removing twigs and seeds from, or in

otherwise cleaning or refining, marihuana.

(f) An object specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

(g) A kit specifically designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.

(h) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(i) A device, commonly known as a cocaine kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.

(j) A device, commonly known as a bullet, that is specifically designed to deliver a measured amount of controlled substances to the user.

(k) A device, commonly known as a snorter, that is specifically designed to carry a small amount of controlled substances to the user's nose.

(*l*) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not limited to, a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.

(m) A spoon, with or without a chain attached, that has a small diameter bowl and that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7453 Sale of object designed for inhaling nitrous oxide or drug paraphernalia prohibited; notice; compliance.

Sec. 7453. (1) Subject to subsection (2), a person shall not sell or offer for sale an object specifically designed for inhaling nitrous oxide for recreational purposes or drug paraphernalia, knowing that the object specifically designed for inhaling nitrous oxide for recreational purposes will be used to inhale nitrous oxide for recreational purposes or that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) Before a person is arrested for a violation of subsection (1), the attorney general or a prosecuting attorney shall notify the person in writing, not less than 2 business days before the person is to be arrested, that the person is in possession of specific, defined material that has been determined by the attorney general or prosecuting attorney to be an object specifically designed for inhaling nitrous oxide for recreational purposes or drug paraphernalia. The notice also must request that the person refrain from selling or offering for sale the material and must state that if the person complies with the notice, no arrest will be made for a violation of subsection (1).

(3) If a person complies with a notice sent under subsection (2), the compliance is a complete defense in a prosecution under this section, as long as the compliance continues.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988;—Am. 2024, Act 18, Eff. June 10, 2024.

Popular name: Act 368

333.7455 Violation of MCL 333.7453 as misdemeanor; penalty.

Sec. 7455. (1) Except as provided in subsection (2), a person who violates section 7453 is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $5,000.00, or both.

(2) A person 18 years of age or older who violates section 7453 by selling or offering to sell an object specifically designed for inhaling nitrous oxide for recreational purposes or drug paraphernalia to a person less than 18 years of age is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than $7,500.00, or both.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988;—Am. 2024, Act 19, Eff. June 10, 2024.

Popular name: Act 368

333.7457 Applicability of MCL 333.7451 to 333.7455.

Sec. 7457. Sections 7451 to 7455 do not apply to any of the following:

(a) An object sold or offered for sale to a person licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, or any intern, trainee, apprentice, or assistant in a profession licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to 339.2721, for use in

that profession.

(b) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.

(c) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.

(d) A blender, bowl, container, spoon, or mixing device not specifically designed for a use described in section 7451.

(e) A hypodermic syringe or needle sold or offered for sale for the purpose of injecting or otherwise treating livestock or other animals.

(f) An object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988;—Am. 2006, Act 458, Eff. Mar. 20, 2007.

Popular name: Act 368

333.7459 Action for declaratory judgment; defendant.

Sec. 7459. (1) A person who has received a notice under section 7453(2) may commence an action for a declaratory judgment to obtain an adjudication of the legality of the intended sale or offer to sell.

(2) The attorney general or the prosecuting attorney who sent the notice under section 7453(2) shall be made the defendant to an action commenced under subsection (1).

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

333.7461 Declaratory judgment as complete defense.

Sec. 7461. If a declaratory judgment has been issued pursuant to section 7459 stating that sale or offer to sell specified material does not violate section 7453, the declaratory judgment is a complete defense for the person obtaining such a judgment against a prosecution under section 7453.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

PART 75
ENFORCEMENT AND ADMINISTRATION

333.7501 Arrest without warrant.

Sec. 7501. A sheriff, deputy sheriff, or local or state police officer who has reasonable cause to believe that a violation of this article punishable by imprisonment for 1 year or more has taken place or is taking place and reasonable cause to believe that an individual has committed or is committing the violation, may arrest that individual without a warrant for that violation whether or not the violation was committed in the law enforcement officer's presence.

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

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.

Popular name: Act 368

333.7502 Powers of agents.

Sec. 7502. (1) An inspection agent or investigatory agent of the department of commerce may do any of the following:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state.

(b) Seize property pursuant to this article.

(c) Perform other law enforcement duties the administrator or the department of commerce designates.

(2) An agent of the department of treasury designated by the commissioner of revenue may exercise the powers specified in subsection (1) with regard to the seizure of property under section 7521(e) and (f) after notification of the department of state police or any other local law enforcement agency having jurisdiction.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 251, Imd. Eff. Sept. 29, 1982;—Am. 1993, Act 80, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7504 Administrative inspection warrants; issuance; execution; oath or affirmation

showing probable cause; seizure of property; existence of probable cause; affidavit; contents of warrant.

Sec. 7504. (1) Administrative inspection warrants shall be issued and executed as prescribed in this part.

(2) A magistrate within the magistrate's jurisdiction, upon proper oath or affirmation showing probable cause, may issue a warrant for the purpose of conducting an administrative inspection authorized by this article or the rules promulgated under this article and seizures of property appropriate to the inspection. Probable cause exists upon showing a valid public interest in the effective enforcement of this article or the rules promulgated under this article sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(3) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the magistrate and establishing the grounds for issuing the warrant. The magistrate, if satisfied that the grounds for the application exist or that there is probable cause to believe they exist, shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected.

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

Popular name: Act 368

333.7505 Contents, execution, and return of warrant; copy of warrant and receipt for property seized; inventory of property taken; delivering copy of inventory; filing warrant with copy of return and papers returnable.

Sec. 7505. (1) The warrant shall:

(a) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof.

(b) Be directed to a person described in section 7502.

(c) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified.

(d) Identify the item or types of property to be seized, if any.

(e) Designate the magistrate to whom it shall be returned.

(2) A warrant issued pursuant to this section shall be executed and returned within 10 days after its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least 1 credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(3) The magistrate who issues a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the magistrate's court in which the inspection was made.

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

Popular name: Act 368

333.7507 Administrative inspections of controlled premises.

Sec. 7507. (1) The department of commerce may make administrative inspections of controlled premises in accordance with this section.

(2) When authorized by an administrative inspection warrant, an officer or employee designated by the department of commerce, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the department of commerce may:

(a) Inspect and copy records required to be kept by this article.

(b) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found therein and, except as provided in subsection (5) all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this article.

(c) Inventory any stock of a controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an

administrative subpoena issued in accordance with law, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) If the owner, operator, or agent in charge of the controlled premises consents.

(b) In situations presenting imminent danger to health or safety.

(c) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant.

(d) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking.

(e) In any other situation in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data or sales data, other than shipment data or pricing data, unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(6) For purposes of this section only,"controlled premises" means:

(a) A place where a person licensed or exempted from licensure requirements under this article is required to keep records.

(b) A place including a factory, warehouse, establishment, and conveyance in which a person licensed or exempted from licensure requirements under this article is permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of a controlled substance.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1993, Act 80, Imd. Eff. Apr. 1, 1994.

Popular name: Act 368

333.7511 Restraining or enjoining violation; trial by jury.

Sec. 7511. (1) The circuit court of a county having jurisdiction over an alleged violator of this article has jurisdiction to restrain or enjoin a violation of this article.

(2) The defendant may demand a trial by jury for an alleged violation of an injunction or restraining order issued under this section.

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

Popular name: Act 368

333.7515 Cooperation with federal and other state agencies; relying and acting upon results, information, and evidence.

Sec. 7515. (1) The administrator may cooperate with federal and other state agencies in discharging its responsibilities as to traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the administrator may:

(a) Arrange for the exchange of information among governmental officials as to the use and abuse of controlled substances.

(b) Coordinate and cooperate in training programs as to controlled substance law enforcement at local and state levels.

(c) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent individuals and other controlled substance law offenders in this state, and make the information available for federal, state, and local law enforcement purposes. The administrator shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under section 7516.

(d) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(2) Results, information, and evidence received from the bureau relating to the regulatory functions of this article, including results of inspections conducted by it, may be relied and acted upon by the disciplinary subcommittee in the exercise of its regulatory functions under this article.

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

Popular name: Act 368

333.7516 Name or identity of patient, research, or individual.

Sec. 7516. A practitioner engaged in professional practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the practitioner's licensing agency, and may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

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

Popular name: Act 368

333.7521 Property subject to forfeiture; burden of proof; "imitation controlled substance" defined.

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

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

(b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

(c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) Except as provided in subparagraphs (*i*) to (*iv*), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

(*i*) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

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

(*iii*) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

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

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

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.

(g) Any other drug paraphernalia not described in subdivision (b) or (c).

(2) The plaintiff in a forfeiture action under this article has the burden of proving a violation of this article by clear and convincing evidence. This subsection applies to forfeiture proceedings commenced under this article on or after the effective date of the amendatory act that added this subsection.

(3) As used in this section, "imitation controlled substance" means that term as defined in section 7341.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 251, Imd. Eff. Sept. 29, 1982;—Am. 1984, Act 347, Eff. Mar. 29, 1985;—Am. 1988, Act 60, Eff. Aug. 1, 1989;—Am. 1988, Act 139, Imd. Eff. June 3, 1988;—Am. 1990, Act 30, Eff. Mar. 28, 1991;—Am. 2000, Act 302, Eff. Jan. 1, 2001;—Am. 2001, Act 236, Eff. Jan. 6, 2003;—Am. 2015, Act 154, Eff. Jan. 18, 2016.

Compiler's note: Enacting section 2 of Act 236 of 2001 provides:

"Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon 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

333.7521a Civil asset forfeiture; conditions, requirements, and limitations; applicability.

Sec. 7521a. (1) Except as otherwise provided in this section, property may be seized as provided in section 7522 for a violation of this article, but is not subject to forfeiture under section 7521 or disposition under section 7524 unless a criminal proceeding involving or relating to the property has been completed and the defendant pleads guilty to or is convicted of a violation of this article.

(2) A criminal conviction or guilty plea under subsection (1) is not required if 1 or more of the following apply:

(a) No person claims any interest in the property as provided under section 7523 or the owner of the property withdraws his or her claim in the property.

(b) The owner of the property waives the criminal conviction or plea requirement under subsection (1) and elects to proceed with the civil forfeiture proceeding.

(c) A criminal charge has been filed and 1 or both of the following apply:

(*i*) The defendant is outside this state and cannot reasonably be extradited or brought back to the state for prosecution.

(*ii*) Reasonable efforts have been made by law enforcement authorities to locate and arrest the defendant, but the defendant has not been located.

(3) If a person withdraws his or her claim under subsection (2)(a), the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or related to the property, the attorney general, must review the seizure of the property and approve the forfeiture of the property before the property may be forfeited.

(4) Subsection (1) does not prohibit the immediate destruction of property that may not be lawfully possessed by any person or that is dangerous to the health or safety of the public regardless of whether the person is convicted of a violation of this article.

(5) This section applies to forfeiture proceedings that are initiated on or after August 7, 2019.

(6) Except as provided in subsection (7), this section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds $50,000.00, excluding the value of contraband.

(7) This section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds $20,000.00, excluding the value of contraband, if the forfeiture proceedings were initiated in connection with the seizure of property by law enforcement officers appointed by a public airport authority created under section 110 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.110, or by a regional airport authority created under section 139 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.139.

History: Add. 2019, Act 7, Eff. Aug. 7, 2019;—Am. 2022, Act 86, Imd. Eff. May 26, 2022.

Popular name: Act 368

333.7522 Property subject to forfeiture; seizure; process; seizure without process.

Sec. 7522. Property that is subject to forfeiture under this article or pursuant to section 7521 may be seized upon process issued by the circuit court having jurisdiction over the property. Seizure without process may be made under any of the following circumstances:

(a) Incident to a lawful arrest, pursuant to a search warrant, or pursuant to an inspection under an administrative inspection warrant.

(b) The property is the subject of a prior judgment in favor of this state in an injunction or forfeiture proceeding under this article or pursuant to section 17766a.

(c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this article or section 17766a.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 251, Imd. Eff. Sept. 29, 1982;—Am. 1990, Act 30, Eff. Mar. 28, 1991.

Popular name: Act 368

333.7523 Seizure under MCL 333.7522; forfeiture proceedings; procedure; property subject to section or to order and judgment of court; powers of seizing agency; determining title to forfeited real property; forfeiture of real property encumbered by bona fide security interest; examination of money.

Sec. 7523. (1) Subject to section 7521a, if property is seized under section 7522, forfeiture proceedings must be instituted promptly. If the property is seized without process under section 7522, and the total value

of the property seized does not exceed $50,000.00, the following procedure must be used:

(a) The local unit of government that seized the property or, if the property was seized by this state, the state shall notify the owner of the property that the property has been seized and, if charges have been filed against a person for a crime, the person charged, and that the local unit of government or, if applicable, the state intends to forfeit and dispose of the property by delivering a written notice to the owner of the property or by sending the notice to the owner by certified mail. If the name and address of the owner are not reasonably ascertainable, or delivery of the notice cannot be reasonably accomplished, the notice must be published on the local unit of government's or the department of the attorney general's public website and in a newspaper of general circulation in the county in which the property was seized, for 10 successive publishing days.

(b) Unless all criminal proceedings involving or relating to the property have been completed, the seizing agency shall immediately notify the prosecuting attorney for the county in which the property was seized or, if the attorney general is actively handling a case involving or relating to the property, the attorney general of the seizure of the property and the intention to forfeit and dispose of the property.

(c) Any person claiming an interest in property that is the subject of a notice under subdivision (a) may, within 20 days after receipt of the notice or of the date of the first publication of the notice, file a written claim signed by the claimant with the local unit of government or the state expressing his or her interest in the property and any objection to forfeiture. A claim or an objection under this subsection must be written, verified, and signed by the claimant, and include a detailed description of the property and the property interest asserted. The verification must include a certification under the penalty of perjury stating that the undersigned has examined the claim and believes it to be, to the best of the claimant's knowledge, true and complete. A written claim under this subsection must be made on the form developed by the state court administrative office as required under subsection (2). Upon the filing of the claim, the local unit of government or, if applicable, this state shall transmit the claim with a list and description of the property seized to the attorney general, the prosecuting attorney for the county, or the city or township attorney for the local unit of government in which the seizure was made. The attorney general, the prosecuting attorney, or the city or township attorney shall promptly institute forfeiture proceedings after the expiration of the 20-day period. However, unless all criminal proceedings involving or relating to the property have been completed, a city or township attorney shall not institute forfeiture proceedings without the consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(d) If no claim is filed within the 20-day period as described in subdivision (c), the local unit of government or this state shall declare the property forfeited and shall dispose of the property as provided under section 7524. However, unless all criminal proceedings involving or relating to the property have been completed, the local unit of government or the state shall not dispose of the property under this subdivision without the written consent of the prosecuting attorney or, if the attorney general is actively handling a case involving or relating to the property, the attorney general.

(2) The state court administrative office shall develop and make available to law enforcement agencies, courts, and the public a form for asserting an ownership interest in seized property under subsection (1)(c). The form must require a claimant to provide a detailed description of the property, the claimant's ownership interest in the property, and a signed attestation that the claimant has a bona fide ownership interest in the property.

(3) Property taken or detained under this article is not subject to an action to recover personal property, but is deemed to be in the custody of the seizing agency subject only to this section or an order and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the seizing agency may do any of the following:

(a) Place the property under seal.

(b) Remove the property to a place designated by the court.

(c) Require the administrator to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Deposit money seized under this article into an interest-bearing account in a financial institution. As used in this subdivision, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in this state under the laws of this state or the United States.

(4) Title to real property forfeited under this article must be determined by a court of competent jurisdiction. A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(5) An attorney for a person who is charged with a crime involving or related to the money seized under this article must be afforded a period of 60 days within which to examine that money. This 60-day period begins to run after notice is given under subsection (1)(a) but before the money is deposited into a financial institution under subsection (3)(d). If the attorney general, prosecuting attorney, or city or township attorney fails to sustain his or her burden of proof in forfeiture proceedings under this article, the court shall order the return of the money, including any interest earned on money deposited into a financial institution under subsection (3)(d).

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 251, Imd. Eff. Sept. 29, 1982;—Am. 1985, Act 135, Imd. Eff. Sept. 30, 1985;—Am. 1988, Act 7, Imd. Eff. Feb. 8, 1988;—Am. 1990, Act 30, Eff. Mar. 28, 1991;—Am. 1990, Act 336, Eff. Apr. 1, 1991;—Am. 2006, Act 130, Imd. Eff. May 5, 2006;—Am. 2016, Act 418, Eff. Apr. 4, 2017;—Am. 2019, Act 9, Eff. Aug. 7, 2019.

Popular name: Act 368

333.7523a Stay of civil forfeiture during pending criminal proceedings; forfeiture hearing; burden of proof; return of property; applicability.

Sec. 7523a. (1) If section 7521a applies to a forfeiture case under this article, the seized property is subject to forfeiture under section 7521, and a person has filed a claim as provided under section 7523, a civil forfeiture action under this act must be stayed during the pendency of the applicable criminal proceedings. The civil forfeiture action must proceed after the defendant is convicted of, or enters a guilty plea to, the offense involved, or 1 or more of the events described in section 7521a(2) applies.

(2) At the forfeiture hearing, the plaintiff must prove 1 or both of the following, as applicable:

(a) The property is subject to forfeiture as provided in section 7521(1).

(b) If a person, other than the person who has been convicted of a violation of this article or entered into a plea agreement in connection with a violation of this article as provided under section 7521a(1), claims an ownership or security interest in the property, that the person claiming the interest in the property had prior knowledge of or consented to the commission of the crime.

(3) If the plaintiff fails to meet the burden of proof under subsection (2), property seized under section 7522 must be returned to the owner not more than 14 days from the date the court issues a dispositive order.

(4) Except as otherwise provided in section 7521a, property must be returned to the owner not more than 14 days after the occurrence of any of the following:

(a) A warrant is not issued against a person for the commission of a crime within 90 days after the property was seized.

(b) All charges against the person relating to the commission of a crime are dismissed.

(c) The person charged with committing a crime is acquitted of the crime.

(d) In the case of multiple defendants, all persons charged with committing a crime are acquitted of the crime.

(e) Entry of a court order under this article for the return of the property.

(5) A party to a forfeiture proceeding may seek an extension of the time periods described in this section for good cause. The court may grant a motion for an extension under this subsection for good cause shown.

(6) This section does not apply to forfeiture proceedings in which the aggregate fair market value of the property and currency seized exceeds $20,000.00, excluding the value of contraband, if the forfeiture proceedings were initiated in connection with the seizure of property by law enforcement officers appointed by a public airport authority created under section 110 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.110, or by a regional airport authority created under section 139 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.139.

History: Add. 2019, Act 8, Eff. Aug. 7, 2019;—Am. 2022, Act 87, Imd. Eff. May 26, 2022.

Popular name: Act 368

333.7524 Disposition of forfeited property; donation of lights and scales for educational purposes; appointment, compensation, and authority of receiver to dispose of forfeited real property; expenses of forfeiture proceedings; court order.

Sec. 7524. (1) When property is forfeited under this article, the local unit of government that seized the property may do any of the following, or if the property is seized by or in the custody of this state, the state may do any of the following, subject to section 7523(1)(d):

(a) Retain the property for official use.

(b) Sell the property that is not required to be destroyed by law and that is not harmful to the public. The proceeds and any money, negotiable instruments, securities, or any other thing of value as described in section 7521(1)(f) that are forfeited under this article shall be deposited with the treasurer of the entity having budgetary authority over the seizing agency and applied as follows:

(*i*) For the payment of proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process, maintenance of custody, advertising, and court costs, except as otherwise provided in subsection (4).

(*ii*) The balance remaining after the payment of expenses shall be distributed by the court having jurisdiction over the forfeiture proceedings to the treasurer of the entity having budgetary authority over the seizing agency. If more than 1 agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the money among the treasurers of the entities having budgetary authority over the seizing agencies. A seizing agency may direct that the funds or a portion of the funds it would otherwise have received under this subsection be paid to nonprofit organizations whose primary activity is to assist law enforcement agencies with drug-related criminal investigations and obtaining information for solving crimes. The money received by a seizing agency under this subparagraph and all interest and other earnings on money received by the seizing agency under this subparagraph shall be used only for law enforcement purposes, as appropriated by the entity having budgetary authority over the seizing agency. A distribution made under this subparagraph shall serve as a supplement to, and not a replacement for, funds otherwise budgeted for law enforcement purposes.

(c) Require the administrator to take custody of the property and remove it for disposition in accordance with law.

(d) Forward it to the bureau for disposition.

(2) Notwithstanding subsection (1), this state or local units of government may donate lights for plant growth or scales forfeited under this article to elementary or secondary schools or institutions of higher education that request in writing to receive those lights or scales under this subsection, for educational purposes. This state or local units of government shall donate lights and scales under this subsection to elementary or secondary schools or institutions of higher education in the order in which the written requests are received. This state or local units of government may limit the number of lights and scales available to each requestor.

(3) In the course of selling real property under subsection (1)(b), the court that has entered an order of forfeiture may, on motion of the agency to whom the property has been forfeited, appoint a receiver to dispose of the real property forfeited. The receiver is entitled to reasonable compensation. The receiver has authority to do all of the following:

(a) List the forfeited real property for sale.

(b) Make whatever arrangements are necessary for the maintenance and preservation of the forfeited real property.

(c) Accept offers to purchase the forfeited real property.

(d) Execute instruments transferring title to the forfeited real property.

(4) If a court enters an order of forfeiture, the court may order a person who claimed an interest in the forfeited property under section 7523(1)(c) to pay the expenses of the proceedings of forfeiture to the entity having budgetary authority over the seizing agency.

History: 1978, Act 368, Eff. Sept. 30, 1978;—Am. 1982, Act 251, Imd. Eff. Sept. 29, 1982;—Am. 1985, Act 135, Imd. Eff. Sept. 30, 1985;—Am. 1988, Act 7, Imd. Eff. Feb. 8, 1988;—Am. 1990, Act 30, Eff. Mar. 28, 1991;—Am. 1990, Act 336, Eff. Apr. 1, 1991;—Am. 1994, Act 8, Imd. Eff. Feb. 24, 1994;—Am. 2006, Act 558, Imd. Eff. Dec. 29, 2006;—Am. 2011, Act 161, Imd. Eff. Oct. 4, 2011;—Am. 2016, Act 418, Eff. Apr. 4, 2017.

Popular name: Act 368

333.7524a Repealed. 2015, Act 148, Eff. Feb. 1, 2016.

Compiler's note: The repealed section pertained to annual report by local unit of government concerning forfeiture activities.

Popular name: Act 368

333.7524b Report by agency of seizure and forfeiture activities under uniform forfeiture reporting act.

Sec. 7524b. (1) Beginning February 1, 2016, each reporting agency shall report all seizure and forfeiture activities under this article to the department of state police as required under the uniform forfeiture reporting act.

(2) Beginning February 1, 2016, each reporting agency is subject to audit as required under the uniform forfeiture reporting act.

(3) As used in this section, "reporting agency" means that term as defined in section 7 of the uniform forfeiture reporting act.

History: Add. 2015, Act 151, Eff. Feb. 1, 2016.

Popular name: Act 368

333.7525 Controlled substance as contraband; seizure and summary forfeiture; seizure and forfeiture of species of plants.

Sec. 7525. (1) A controlled substance listed in schedule 1 that is possessed, transferred, sold, or offered for sale in violation of this article is contraband and shall be seized and summarily forfeited to this state. A controlled substance listed in schedule 1 which is seized or comes into the possession of this state, the owner of which is unknown, is contraband and shall be summarily forfeited to this state.

(2) Species of plants from which controlled substances in schedules 1 and 2 may be derived which have been planted or cultivated in violation of this article, or of which the owner or cultivator is unknown, or which are wild growths, may be seized and summarily forfeited to this state.

(3) The failure, upon demand by the administrator or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate license or proof that he or she is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

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

Popular name: Act 368

333.7527 Destruction of controlled substance seized as evidence.

Sec. 7527. (1) Prior to trial the prosecuting attorney may move in writing for an order permitting the destruction of all or part of a controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance seized as evidence in connection with a violation of this article. The motion shall specify the reasons supporting the destruction. The prosecuting attorney shall serve a copy of the motion, and any supporting materials, on the defendant or his or her attorney.

(2) If the defendant objects, the defendant or his or her attorney shall file specific objections within 21 days after receiving the motion described in subsection (1). Failing to comply with this time limit waives any objection to the destruction of the evidence.

(3) Before any hearing on the motion, the defendant or his or her attorney shall have an adequate opportunity to inspect or test, or both, the evidence sought to be destroyed, subject to reasonable supervision by laboratory or law enforcement personnel.

(4) Following a hearing, the court may order destruction of all or part of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance if the court determines on the record that the destruction is warranted. The court shall specify the evidence to be destroyed and may include further provisions in the order as the interests of justice require.

(5) The law enforcement agency having custody of the evidence shall destroy the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance in accordance with an order entered under subsection (4). Before destroying the evidence, the law enforcement agency shall make an accurate photographic record of the controlled substance, controlled substance analogue, counterfeit substance, or imitation controlled substance. The court may order that further records be made before the evidence is destroyed.

History: Add. 1993, Act 289, Eff. Apr. 1, 1994.

Popular name: Act 368

333.7531 Burden of proof of exemption or exception; presumption as to license or order form; burden of rebutting presumption; liability not imposed for lawful performance of duties.

Sec. 7531. (1) It is not necessary for this state to negate any exemption or exception in this article in a complaint, information, indictment, or other pleading or in a trial, hearing, or other proceeding under this article. The burden of proof of an exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the authorized holder of an appropriate license or order form issued under this article, the person is presumed not to be the holder of the license or order form. The burden of proof is upon the person to rebut the presumption.

(3) A liability is not imposed by this article or an authorized state, county, or local officer, engaged in the lawful performance of the officer's duties.

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

Popular name: Act 368

333.7533 Judicial review.

Sec. 7533. Judicial review of a final determination, finding, or conclusion of the administrator shall be

governed by the administrative procedures act of 1969.

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

Popular name: Act 368

333.7541 Educational programs; powers of administrator.

Sec. 7541. The administrator, if funds are appropriated therefor, may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs the administrator may:

(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.

(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances.

(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems.

(d) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances.

(e) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them.

(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

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

Popular name: Act 368

333.7543 Research and enforcement; duties of administrator.

Sec. 7543. The administrator shall encourage research on misuse and abuse of controlled substances. In connection with the research and furtherance of the enforcement of this article, the administrator may:

(a) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse.

(b) Make studies and undertake programs of research to:

(*i*) Develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this article.

(*ii*) Determine patterns of misuse and abuse of controlled substances and the social effects thereof.

(*iii*) Improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.

(c) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

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

Popular name: Act 368

333.7544 Authorization to withhold names and other identifying characteristics of individuals who are subjects of research; authorization of persons engaged in research to possess and distribute controlled substances; exemption from prosecution.

Sec. 7544. (1) The administrator may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(2) The administrator may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

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

Popular name: Act 368

333.7545 Contracts for educational and research activities.

Sec. 7545. The administrator may enter into contracts for educational and research activities without performance bonds.

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