

HOUSE BILL No. 5410

September 17, 2009, Introduced by Reps. Angerer and Slavens and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7333 (MCL 333.7333), as amended by 2006 PA 451.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7333. (1) As used in this section, "good faith" means the
2 prescribing or dispensing of a controlled substance by a
3 practitioner licensed under section 7303 in the regular course of
4 professional treatment to or for an individual who is under
5 treatment by the practitioner for a pathology or condition other
6 than that individual's physical or psychological dependence upon or
7 addiction to a controlled substance, except as provided in this
8 article. Application of good faith to a pharmacist means the
9 dispensing of a controlled substance pursuant to a prescriber's
10 order which, in the professional judgment of the pharmacist, is

1 lawful. The pharmacist shall be guided by nationally accepted
2 professional standards including, but not limited to, all of the
3 following, in making the judgment:

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

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

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

9 (d) Unusual dosages.

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

12 (2) Except as otherwise provided in this section, a
13 practitioner, in good faith, may dispense a controlled substance
14 included in schedule 2 upon receipt of a prescription of a
15 practitioner licensed under section 7303 on a prescription form. A
16 **IN COMPLIANCE WITH 21 CFR 1306.12, A** practitioner ~~shall not~~ **MAY**
17 issue more than 1 prescription for a controlled substance included
18 in schedule 2 on a single prescription form.

19 (3) In an emergency situation, as described in R 338.3165 of
20 the Michigan administrative code, a controlled substance included
21 in schedule 2 may be dispensed upon the oral prescription of a
22 practitioner if ~~the~~ the prescribing practitioner promptly fills out a
23 prescription form and forwards the prescription form to the
24 dispensing pharmacy within 7 days after the oral prescription is
25 issued. Except for a terminally ill patient whose terminal illness
26 the pharmacist documents pursuant to rules promulgated by the
27 administrator, a prescription for a controlled substance included

1 in schedule 2 shall not be filled more than ~~60~~90 days after the
2 date on which the prescription was issued. A prescription for a
3 controlled substance included in schedule 2 for a terminally ill
4 patient whose terminal illness the pharmacist documents pursuant to
5 rules promulgated by the administrator may be partially filled in
6 increments for not more than 60 days after the date on which the
7 prescription was issued.

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

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

25 (6) If a prescription is required under this section, the
26 prescription shall contain the quantity of the controlled substance
27 prescribed in both written and numerical terms. A prescription is

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

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

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

26 (a) Applies to the administrator for a permit in accordance
27 with rules promulgated under this part. The application shall

1 contain the name of the individual in charge of the day to day
2 operations of the animal control shelter or animal protection
3 shelter or class B dealer's facilities and the name of the
4 individual responsible for designating employees who will be
5 practicing euthanasia on animals pursuant to this act.

6 (b) Complies with the rules promulgated by the administrator
7 for the storage, handling, and use of a commercially prepared,
8 premixed solution of sodium pentobarbital to practice euthanasia on
9 animals. A record of use shall be maintained and shall be available
10 for inspection.

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

24 (9) The application described in subsection (8) shall include
25 the names and addresses of all individuals employed by the animal
26 control shelter or animal protection shelter or class B dealer who
27 have been trained as described in subsection (8)(c) and the name of

1 the veterinarian who trained them. The list of names and addresses
2 shall be updated every 6 months.

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

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

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

17 (11) A veterinarian, including a veterinarian who trains
18 individuals as described in subsection (8)(c), is not civilly or
19 criminally liable for the use of a commercially prepared, premixed
20 solution of sodium pentobarbital by an animal control shelter or
21 animal protection shelter or class B dealer unless the veterinarian
22 is employed by or under contract with the animal control shelter or
23 animal protection shelter or class B dealer and the terms of the
24 veterinarian's employment or the contract require the veterinarian
25 to be responsible for the use or administration of the commercially
26 prepared, premixed solution of sodium pentobarbital.

27 (12) A person shall not knowingly use or permit the use of a

1 commercially prepared, premixed solution of sodium pentobarbital in
2 violation of this section.

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

8 (14) Notwithstanding subsections (1) to (5), an animal control
9 shelter registered with the department of agriculture pursuant to
10 1969 PA 287, MCL 287.331 to 287.340, may acquire a limited permit
11 only for the purpose of buying, possessing, and administering a
12 commercially prepared solution of an animal tranquilizer to sedate
13 a feral, wild, difficult to handle, or other animal for euthanasia,
14 or to tranquilize an animal running at large that is dangerous or
15 difficult to capture, if the animal control shelter does all of the
16 following:

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

23 (b) Complies with the rules promulgated by the administrator
24 for the storage, handling, and use of a commercially prepared
25 solution of an animal tranquilizer. A record of use shall be
26 maintained and shall be available for inspection by the department
27 of agriculture.

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

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

23 (a) Applies to the administrator for a permit in accordance
24 with the rules promulgated under this part. The application shall
25 contain the name of the individual in charge of the day to day
26 operations of the animal protection shelter and the name of the
27 individual responsible for designating employees who will be

1 administering an animal tranquilizer pursuant to this act.

2 (b) Complies with the rules promulgated by the administrator
3 for the storage, handling, and use of a commercially prepared
4 solution of an animal tranquilizer. A record of use shall be
5 maintained and shall be available for inspection by the department
6 of agriculture.

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

21 (16) The application described in subsection (14) or (15)
22 shall include the names and business addresses of all individuals
23 employed by the animal control shelter or animal protection shelter
24 who have been trained as described in subsection (14)(c) or (15)(c)
25 and shall include documented proof of the training. The list of
26 names and business addresses shall be updated every 6 months.

27 (17) If an animal control shelter or animal protection shelter

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

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

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

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

23 (19) A person shall not knowingly use or permit the use of an
24 animal tranquilizer in violation of this section.

25 (20) This section does not require that a veterinarian be
26 employed by or under contract with an animal control shelter or
27 animal protection shelter to obtain, possess, or administer a

1 commercially prepared solution of an animal tranquilizer pursuant
2 to this section.

3 (21) As used in this section:

4 (a) "Animal tranquilizer" means xylazine hydrochloride or
5 other animal tranquilizing drug as approved by the United States
6 food and drug administration and by the state department of
7 agriculture for use as described in this section.

8 (b) "Class B dealer" means a class B dealer licensed by the
9 United States department of agriculture pursuant to the animal
10 welfare act, 7 USC 2131 to ~~2147, 2149, and 2151 to~~ 2159 and the
11 department of agriculture pursuant to 1969 PA 224, MCL 287.381 to
12 287.395.