

# HOUSE BILL No. 5131

October 27, 2011, Introduced by Reps. Liss and Haines and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7405, 17702, 17703, 17708, 17751, 17754, and  
17763 (MCL 333.7405, 333.17702, 333.17703, 333.17708, 333.17751,  
333.17754, and 333.17763), sections 7405, 17708, 17751, and 17763  
as amended by 2011 PA 155 and sections 17702 and 17703 as amended  
and section 17754 as added by 2006 PA 672, and by adding section  
17744.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 7405. (1) A person:
- 2           (a) Who is licensed by the administrator under this article
- 3 shall not distribute, prescribe, or dispense a controlled substance
- 4 in violation of section 7333.
- 5           (b) Who is a licensee shall not manufacture a controlled

1 substance not authorized by his or her license or distribute,  
2 prescribe, or dispense a controlled substance not authorized by his  
3 or her license to another licensee or other authorized person,  
4 except as authorized by rules promulgated by the administrator.

5 (c) Shall not refuse an entry into any premises for an  
6 inspection authorized by this article.

7 (d) Shall not knowingly keep or maintain a store, shop,  
8 warehouse, dwelling, building, vehicle, boat, aircraft, or other  
9 structure or place, that is frequented by persons using controlled  
10 substances in violation of this article for the purpose of using  
11 controlled substances, or that is used for keeping or selling  
12 controlled substances in violation of this article.

13 (e) Who is a practitioner shall not dispense a ~~prescription~~  
14 ~~for a~~ controlled substance **UNDER A PRESCRIPTION** written and signed;  
15 ~~or~~ **WRITTEN OR CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND**  
16 transmitted by facsimile; ~~or electronic transmission, OR TRANSMITTED~~  
17 **ELECTRONICALLY** or **BY** other means of communication by a physician  
18 prescriber or dentist prescriber licensed to practice in a state  
19 other than Michigan, unless the prescription is issued by a  
20 physician prescriber or dentist prescriber who is authorized under  
21 the laws of that state to practice dentistry, medicine, or  
22 osteopathic medicine and surgery and to prescribe controlled  
23 substances.

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

26 Sec. 17702. (1) "Agent" means an ~~authorized person who acts~~  
27 **INDIVIDUAL DESIGNATED BY A PRESCRIBER TO ACT** on behalf of or at the

1 discretion of a ~~THAT~~ prescriber **AS PROVIDED IN SECTION 17744.**

2 (2) "Brand name" means the registered trademark name given to  
3 a drug product by its manufacturer.

4 (3) "Current selling price" means the retail price for a  
5 prescription drug ~~which~~ **THAT** is available for sale from a pharmacy.

6 Sec. 17703. (1) "Device" means an instrument, apparatus, or  
7 contrivance, including its components, parts, and accessories,  
8 intended for use in the diagnosis, cure, mitigation, treatment, or  
9 prevention of disease in human beings or other animals, or to  
10 affect the structure or function of the body of human beings or  
11 other animals.

12 (2) "Dispense" means to issue 1 or more doses of a drug for  
13 subsequent administration to, or use by, a patient.

14 (3) "Dispensing prescriber" means a prescriber, other than a  
15 veterinarian, who dispenses prescription drugs.

16 (4) "Drug" means any of the following:

17 (a) A substance recognized or for which the standards or  
18 specifications are prescribed in the official compendium.

19 (b) A substance intended for use in the diagnosis, cure,  
20 mitigation, treatment, or prevention of disease in human beings or  
21 other animals.

22 (c) A substance, other than food, intended to affect the  
23 structure or a function of the body of human beings or other  
24 animals.

25 (d) A substance intended for use as a component of a substance  
26 specified in subdivision (a), (b), or (c), but not including a  
27 device or its components, parts, or accessories.

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

4 (6) "Electronically transmitted prescription" means the  
 5 communication of an original prescription or refill authorization  
 6 by electronic means including computer to computer, computer to  
 7 facsimile machine, or electronic mail transmission that contains  
 8 the same information it contained when the prescriber or ~~authorized~~  
 9 **HIS OR HER** agent transmitted the prescription. Electronically  
 10 transmitted prescription does not include a prescription or refill  
 11 authorization transmitted by telephone or facsimile machine.

12 Sec. 17708. (1) "Preceptor" means a pharmacist approved by the  
 13 board to direct the training of an intern in an approved pharmacy.

14 (2) "Prescriber" means a licensed dentist, a licensed doctor  
 15 of medicine, a licensed doctor of osteopathic medicine and surgery,  
 16 a licensed doctor of podiatric medicine and surgery, a licensed  
 17 optometrist certified under part 174 to administer and prescribe  
 18 therapeutic pharmaceutical agents, a licensed veterinarian, or  
 19 another licensed health professional acting under the delegation  
 20 and using, recording, or otherwise indicating the name of the  
 21 delegating licensed doctor of medicine or licensed doctor of  
 22 osteopathic medicine and surgery.

23 (3) "Prescription" means an order ~~for~~ **BY A PRESCRIBER TO FILL,**  
 24 **COMPOUND, OR DISPENSE** a drug or device written and signed; ~~or~~  
 25 **WRITTEN OR CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND** transmitted  
 26 by facsimile; ~~or electronic transmission,~~ **OR TRANSMITTED**  
 27 **ELECTRONICALLY** or **BY** other means of communication. ~~by a prescriber~~

1 ~~to be filled, compounded, or dispensed. Prescribing is limited to a~~  
2 ~~prescriber.~~ An order transmitted in other than written **OR HARD-COPY**  
3 form shall be electronically recorded, printed, or written and  
4 immediately dated by the pharmacist, and that record constitutes  
5 the original prescription. In a health facility or agency licensed  
6 under article 17 or other medical institution, an order for a drug  
7 or device in the patient's chart constitutes for the purposes of  
8 this definition the original prescription. Subject to section  
9 17751(2) **AND (5)**, prescription includes, but is not limited to, an  
10 order for a drug, not including a controlled substance as defined  
11 in section 7104 except under circumstances described in section  
12 17763(e), written and signed; ~~or~~ **WRITTEN OR CREATED IN AN**  
13 **ELECTRONIC FORMAT, SIGNED, AND** transmitted by facsimile; ~~or~~  
14 ~~electronic transmission,~~ or **TRANSMITTED ELECTRONICALLY OR BY** other  
15 means of communication by a physician prescriber or dentist  
16 prescriber licensed to practice dentistry, medicine, or osteopathic  
17 medicine and surgery in a state other than Michigan.

18 (4) "Prescription drug" means 1 or more of the following:

19 (a) A drug dispensed pursuant to a prescription.

20 (b) A drug bearing the federal legend "CAUTION: federal law  
21 prohibits dispensing without prescription" or "Rx only".

22 (c) A drug designated by the board as a drug that may only be  
23 dispensed pursuant to a prescription.

24 **SEC. 17744. (1) A PRESCRIBER MAY DESIGNATE AN AGENT TO ACT ON**  
25 **BEHALF OF OR AT THE DISCRETION OF THAT PRESCRIBER. A DESIGNATION OF**  
26 **AN AGENT BY A PRESCRIBER UNDER THIS SECTION IS NOT REQUIRED TO BE**  
27 **IN WRITING TO BE A VALID DESIGNATION. IF A DESIGNATION OF AN AGENT**

1 BY A PRESCRIBER UNDER THIS SECTION IS CONTAINED IN A WRITTEN  
2 DOCUMENT, THE PRESCRIBER OR THE AGENT MAY TRANSMIT THAT DOCUMENT TO  
3 A PHARMACY THAT WILL DISPENSE A PRESCRIPTION ISSUED BY THAT  
4 PRESCRIBER.

5 (2) ONLY A PRESCRIBER ACTING WITHIN THE SCOPE OF HIS OR HER  
6 PRACTICE MAY ISSUE A PRESCRIPTION. AN AGENT MAY PREPARE AND  
7 TRANSMIT A PRESCRIPTION THAT HAS BEEN SIGNED BY THE PRESCRIBER,  
8 INCLUDING A SIGNATURE THAT MEETS THE REQUIREMENTS OF SECTION 17754.  
9 THE PRESCRIBER ISSUING A PRESCRIPTION AND THE PHARMACIST DISPENSING  
10 A DRUG OR DEVICE UNDER A PRESCRIPTION IS RESPONSIBLE FOR ALL OF THE  
11 REQUIREMENTS OF STATE AND FEDERAL LAW, RULES, AND REGULATIONS  
12 REGARDING THE ISSUANCE OF PRESCRIPTIONS AND DISPENSING OF DRUGS OR  
13 DEVICES UNDER PRESCRIPTIONS.

14 (3) A PRESCRIBER OR HIS OR HER AGENT MAY TRANSMIT TO A  
15 PHARMACY A PRESCRIPTION THAT IS CONTAINED WITHIN A PATIENT'S CHART  
16 IN A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OR OTHER  
17 MEDICAL INSTITUTION. A PRESCRIPTION THAT IS CONTAINED WITHIN A  
18 PATIENT'S CHART IN A HEALTH FACILITY OR AGENCY LICENSED UNDER  
19 ARTICLE 17 OR OTHER MEDICAL INSTITUTION AND THAT IS CREATED IN AN  
20 ELECTRONIC FORMAT MAY CONTAIN MORE THAN 6 PRESCRIPTIONS AND MAY  
21 CONTAIN PRESCRIPTIONS FOR SCHEDULE 3 THROUGH 5 CONTROLLED  
22 SUBSTANCES AND NONCONTROLLED SUBSTANCES ON THE SAME FORM.

23 Sec. 17751. (1) A pharmacist shall not dispense a drug  
24 requiring a prescription under the federal act or a law of this  
25 state except under authority of an original prescription or an  
26 equivalent record of an original prescription approved by the  
27 board.

1           (2) ~~A~~**SUBJECT TO SUBSECTION (5), A** pharmacist may dispense a  
2 prescription written and signed; ~~or~~**WRITTEN OR CREATED IN AN**  
3 **ELECTRONIC FORMAT, SIGNED, AND** transmitted by facsimile; ~~or~~  
4 ~~electronic transmission,~~**OR TRANSMITTED ELECTRONICALLY** or **BY** other  
5 means of communication by a physician prescriber or dentist  
6 prescriber in a state other than Michigan, but not including a  
7 prescription for a controlled substance as defined in section 7104  
8 except under circumstances described in section 17763(e), only if  
9 the pharmacist in the exercise of his or her professional judgment  
10 determines all of the following:

11           (a) That the prescription was issued pursuant to an existing  
12 physician-patient or dentist-patient relationship.

13           (b) That the prescription is authentic.

14           (c) That the prescribed drug is appropriate and necessary for  
15 the treatment of an acute, chronic, or recurrent condition.

16           (3) A pharmacist or a prescriber shall dispense a prescription  
17 only if the prescription falls within the scope of practice of the  
18 prescriber.

19           (4) A pharmacist shall not knowingly dispense a prescription  
20 after the death of the prescriber or patient.

21           (5) **A PHARMACIST SHALL NOT DISPENSE A DRUG OR DEVICE UNDER A**  
22 **PRESCRIPTION TRANSMITTED BY FACSIMILE OR CREATED IN ELECTRONIC**  
23 **FORMAT AND PRINTED OUT FOR USE BY THE PATIENT UNLESS THE DOCUMENT**  
24 **IS MANUALLY SIGNED BY THE PRESCRIBER. THIS SUBSECTION DOES NOT**  
25 **APPLY TO A PRESCRIPTION THAT IS TRANSMITTED BY A COMPUTER TO A**  
26 **FACSIMILE MACHINE IF THAT PRESCRIPTION COMPLIES WITH SECTION 17754.**

27           (6) **AFTER CONSULTATION WITH AND AGREEMENT FROM THE PRESCRIBER,**

1 A PHARMACIST MAY ADD OR CHANGE A PATIENT'S ADDRESS, DOSAGE FORM,  
2 DRUG STRENGTH, DRUG QUANTITY, DIRECTIONS FOR USE, OR ISSUE DATE  
3 WITH REGARD TO A PRESCRIPTION. A PHARMACIST SHALL NOTE THE DETAILS  
4 OF THE CONSULTATION AND AGREEMENT REQUIRED UNDER THIS SUBSECTION ON  
5 THE PRESCRIPTION AND SHALL MAINTAIN THAT DOCUMENTATION WITH THE  
6 PRESCRIPTION AS REQUIRED IN SECTION 17752. A PHARMACIST SHALL NOT  
7 CHANGE THE PATIENT'S NAME, CONTROLLED SUBSTANCE PRESCRIBED UNLESS  
8 AUTHORIZED TO DISPENSE A LOWER COST GENERICALLY EQUIVALENT DRUG  
9 PRODUCT UNDER SECTION 17755, OR THE PRESCRIBER'S SIGNATURE WITH  
10 REGARD TO A PRESCRIPTION.

11 (7) A PRESCRIPTION THAT IS CONTAINED WITHIN A PATIENT'S CHART  
12 IN A HEALTH FACILITY OR AGENCY LICENSED UNDER ARTICLE 17 OR OTHER  
13 MEDICAL INSTITUTION AND THAT IS TRANSMITTED TO A PHARMACY UNDER  
14 SECTION 17744 IS THE ORIGINAL PRESCRIPTION. IF ALL OTHER  
15 REQUIREMENTS OF THIS PART ARE MET, A PHARMACIST SHALL DISPENSE A  
16 DRUG OR DEVICE UNDER A PRESCRIPTION DESCRIBED IN THIS SUBSECTION.  
17 AFTER CONSULTATION WITH THE PRESCRIBER, A PHARMACIST MAY DISPENSE A  
18 DRUG OR DEVICE UNDER A PRESCRIPTION DESCRIBED IN THIS SUBSECTION  
19 EVEN IF THE PRESCRIPTION DOES NOT CONTAIN THE QUANTITY ORDERED. THE  
20 PHARMACIST SHALL RECORD THE QUANTITY DISPENSED ON THE PRESCRIPTION  
21 AND SHALL MAINTAIN THAT DOCUMENTATION WITH THE PRESCRIPTION AS  
22 REQUIRED IN SECTION 17752.

23 Sec. 17754. (1) Except as otherwise provided under article 7  
24 and the federal act, a prescription may be transmitted  
25 electronically as long as the prescription is transmitted in  
26 compliance with the health insurance portability and accountability  
27 act of 1996, Public Law 104-191, or regulations promulgated under



1 that act, 45 CFR parts 160 and 164, by a prescriber or ~~the~~  
2 ~~prescriber's authorized~~ **HIS OR HER** agent and the data are not  
3 altered or modified in the transmission process. The electronically  
4 transmitted prescription shall include all of the following  
5 information:

6 (a) The name, address, and telephone number of the prescriber.

7 (b) The full name of the patient for whom the prescription is  
8 issued.

9 (c) An electronic signature or other identifier that  
10 specifically identifies and authenticates the prescriber or ~~the~~  
11 ~~prescriber's authorized~~ **HIS OR HER** agent.

12 (d) The time and date of the transmission.

13 (e) The identity of the pharmacy intended to receive the  
14 transmission.

15 (f) Any other information required by the federal act or state  
16 law.

17 (2) The electronic equipment or system utilized in the  
18 transmission and communication of prescriptions shall provide  
19 adequate confidentiality safeguards and be maintained to protect  
20 patient confidentiality as required under any applicable federal  
21 and state law and to ensure against unauthorized access. The  
22 electronic transmission of a prescription shall be communicated in  
23 a retrievable, recognizable form acceptable to the intended  
24 recipient. The electronic form utilized in the transmission of a  
25 prescription shall not include "dispense as written" or "d.a.w." as  
26 the default setting.

27 (3) Prior to dispensing a prescription that is electronically

1 transmitted, the pharmacist shall exercise professional judgment  
2 regarding the accuracy, validity, and authenticity of the  
3 transmitted prescription.

4 (4) An electronically transmitted prescription that meets the  
5 requirements of this section is the original prescription.

6 Sec. 17763. In addition to the grounds set forth in part 161,  
7 the disciplinary subcommittee may fine, reprimand, or place a  
8 pharmacist licensee on probation, or deny, limit, suspend, or  
9 revoke the license of a pharmacist or order restitution or  
10 community service for a violation or abetting in a violation of  
11 this part or rules promulgated under this part, or for 1 or more of  
12 the following grounds:

13 (a) Permitting the dispensing of prescriptions by an  
14 individual who is not a pharmacist, pharmacist intern, or  
15 dispensing prescriber.

16 (b) Permitting the dispensing of prescriptions by a pharmacist  
17 intern, except in the presence and under the personal charge of a  
18 pharmacist.

19 (c) Selling at auction drugs in bulk or in open packages  
20 unless the sale has been approved in accordance with rules of the  
21 board.

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

23 (e) In addition to the prohibition contained in section  
24 7405(1)(e), dispensing a prescription for a controlled substance as  
25 defined in section 7104 that is written and signed; ~~or~~ **WRITTEN OR**  
26 **CREATED IN AN ELECTRONIC FORMAT, SIGNED, AND** transmitted by  
27 ~~facsimile; ,~~electronic transmission,~~ OR TRANSMITTED ELECTRONICALLY~~

1 or **BY** other means of communication by a physician prescriber or  
2 dentist prescriber in a state other than Michigan, unless the  
3 prescription is issued by a physician prescriber or dentist  
4 prescriber who is authorized under the laws of that state to  
5 practice dentistry, medicine, or osteopathic medicine and surgery  
6 and to prescribe controlled substances.