

HOUSE BILL 418

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2001 Regular Session
(11r0067)

ENROLLED BILL

-- Environmental Matters/Economic and Environmental Affairs --

Introduced by **Chairman, Environmental Matters Committee (Departmental - Health and Mental Hygiene)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Drugs and Prescription Records - Impounding and Disposing**

3 FOR the purpose of authorizing the Department of Health and Mental Hygiene to
4 impound drugs or prescription records held by an authorized prescriber or a
5 holder of a permit issued by a Health Occupations Licensing Board; requiring
6 the Department of Health and Mental Hygiene to adopt regulations governing
7 the disposition of impounded drugs and prescription records held by a permit
8 holder or an authorized prescriber; authorizing the Department to issue a
9 certain order concerning the impounding and disposing of drugs and
10 prescription records; requiring the Department to issue a certain notice;
11 requiring the Department to give a permit holder or authorized prescriber an
12 opportunity to dispose of drugs and prescription records; requiring the
13 Department to provide the permit holder *or authorized prescriber* with a list of
14 items being impounded; establishing that a reasonable fee may be charged to
15 cover the costs of impoundment, storage, and disposition of drugs and records;
16 requiring the Department to publish notice regarding the date of transferal or

1 destruction of the drugs and records and designating how, where, and when the
2 impounded items may be retrieved by the permit holder or authorized
3 prescriber; requiring a Health Occupations Licensing Board to immediately
4 notify the Division of Drug Control upon the surrender, suspension, or
5 revocation of a permit holder's permit or a prescriber's license; defining certain
6 terms; requiring the Department, prior to issuing orders of impoundment, to
7 adopt certain regulations; and generally relating to the impounding and
8 disposing of drugs and prescription records of certain permit holders and license
9 holders.

10 BY adding to

11 Article - Health - General
12 Section 21-1113
13 Annotated Code of Maryland
14 (2000 Replacement Volume)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Health - General**

18 21-1113.

19 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS
20 INDICATED.

21 (2) "AUTHORIZED PRESCRIBER" MEANS A LICENSED DENTIST, LICENSED
22 PHYSICIAN, LICENSED PODIATRIST, LICENSED VETERINARIAN, CERTIFIED NURSE
23 MIDWIFE TO THE EXTENT PERMITTED UNDER § 8-601 OF THE HEALTH OCCUPATIONS
24 ARTICLE, CERTIFIED NURSE PRACTITIONER TO THE EXTENT PERMITTED UNDER §
25 8-508 OF THE HEALTH OCCUPATIONS ARTICLE, OR OTHER INDIVIDUAL AUTHORIZED
26 BY LAW TO PRESCRIBE PRESCRIPTION OR NONPRESCRIPTION DRUGS OR DEVICES.

27 (3) "BOARD" MEANS A HEALTH OCCUPATION LICENSING BOARD
28 AUTHORIZED TO ISSUE A PERMIT, LICENSE, OR CERTIFICATE UNDER THE HEALTH
29 OCCUPATIONS ARTICLE.

30 (4) (I) "CONTROLLED DANGEROUS SUBSTANCE" MEANS A DRUG,
31 SUBSTANCE, OR IMMEDIATE PRECURSOR LISTED IN SCHEDULES I THROUGH V OF
32 ARTICLE 27 OF THE CODE.

33 (II) "CONTROLLED DANGEROUS SUBSTANCE" DOES NOT INCLUDE
34 TOBACCO OR A DISTILLED SPIRIT, WINE, OR MALT BEVERAGE REGULATED UNDER
35 ARTICLE 2B OF THE CODE.

36 (5) "DRUG" MEANS A PRESCRIPTION OR NONPRESCRIPTION DRUG.

37 (6) "NONPRESCRIPTION DRUG" MEANS A DRUG WHICH MAY BE SOLD
38 WITHOUT A PRESCRIPTION AND WHICH IS LABELED FOR CONSUMER USE IN

1 ACCORDANCE WITH THE REQUIREMENTS OF THE LAWS AND REGULATIONS OF THIS
2 STATE AND THE FEDERAL GOVERNMENT.

3 (7) "PERMIT HOLDER" MEANS A HOLDER OF, OR APPLICANT FOR:

4 (I) A PHARMACY PERMIT, MANUFACTURER'S PERMIT, OR
5 DISTRIBUTOR'S PERMIT ISSUED BY THE STATE BOARD OF PHARMACY UNDER TITLE
6 12 OF THE HEALTH OCCUPATIONS ARTICLE; OR

7 (II) A DISPENSING PERMIT ISSUED BY A BOARD UNDER THE
8 AUTHORITY OF § 12-102(C)(2) OF THE HEALTH OCCUPATIONS ARTICLE.

9 (8) "PRESCRIPTION DRUG" MEANS A DRUG THAT UNDER § 21-220 OF THE
10 HEALTH - GENERAL ARTICLE MAY BE DISPENSED ONLY ON THE PRESCRIPTION OF A
11 HEALTH PRACTITIONER WHO IS AUTHORIZED BY LAW TO PRESCRIBE THE DRUG.

12 (B) (1) THE DEPARTMENT MAY ISSUE AN ORDER OF IMPOUNDMENT AND
13 IMMEDIATELY IMPOUND DRUGS OR PRESCRIPTION RECORDS OF A PERMIT HOLDER
14 OR AN AUTHORIZED PRESCRIBER IF:

15 (I) A PERMIT HOLDER'S PERMIT OR AUTHORIZED PRESCRIBER'S
16 LICENSE HAS EXPIRED OR HAS BEEN REVOKED OR SUSPENDED;

17 (II) AN APPLICATION FOR A PERMIT OR LICENSE HAS BEEN
18 DENIED;

19 (III) A BOARD HAS:

20 1. DETERMINED THAT THE PERMIT HOLDER OR
21 AUTHORIZED PRESCRIBER FAILED TO COMPLY WITH A BOARD ORDER, LETTER OF
22 SURRENDER, OR LAW REGARDING THE DISPOSITION OF DRUGS OR PRESCRIPTION
23 RECORDS; AND

24 2. REQUESTED THAT THE DEPARTMENT IMPOUND THE
25 DRUGS OR PRESCRIPTION RECORDS;

26 (IV) THE DRUGS POSE AN IMMINENT THREAT TO THE PUBLIC
27 HEALTH, SAFETY, OR WELFARE; OR

28 (V) THE CONFIDENTIALITY OF THE PRESCRIPTION RECORDS IS IN
29 IMMINENT DANGER OF BEING COMPROMISED.

30 (2) THE DEPARTMENT MAY NOT IMPOUND THE DRUGS OR
31 PRESCRIPTION RECORDS OF A PERMIT HOLDER OR AUTHORIZED PRESCRIBER WHO
32 IS IN COMPLIANCE WITH A BOARD ORDER OR LAW SPECIFICALLY PROVIDING FOR
33 THE MANNER OF THE DISPOSITION OF DRUGS OR PRESCRIPTION RECORDS.

34 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2) OF THIS
35 SUBSECTION, THE DEPARTMENT SHALL:

1 (I) ATTEMPT TO SERVE WRITTEN NOTICE OF AN IMPOUNDMENT
2 ON THE PERMIT HOLDER OR AUTHORIZED PRESCRIBER; ~~AND~~

3 (II) PROVIDE THE PERMIT HOLDER OR ~~THE~~ AUTHORIZED
4 PRESCRIBER WITH AN OPPORTUNITY TO AVOID IMPOUNDMENT BY ALLOWING THE
5 PERMIT HOLDER OR AUTHORIZED PRESCRIBER TO DISPOSE OF THE DRUGS OR
6 PRESCRIPTION RECORDS IN A MANNER ACCEPTABLE TO THE DEPARTMENT;

7 (III) PROVIDE THE PERMIT HOLDER OR AUTHORIZED PRESCRIBER
8 WITH AN OPPORTUNITY PRIOR TO IMPOUNDMENT TO REVIEW THE NATURE, TYPE,
9 AND AMOUNT OF INFORMATION UPON WHICH THE DEPARTMENT ISSUED THE
10 IMPOUNDMENT ORDER; AND

11 (IV) PROVIDE THE PERMIT HOLDER OR AUTHORIZED PRESCRIBER
12 WITH AN OPPORTUNITY TO AVOID IMPOUNDMENT BY PROVIDING THE DEPARTMENT
13 WITH INFORMATION UPON WHICH THE DEPARTMENT COULD REASONABLY
14 CONCLUDE THAT THE IMPOUNDMENT IS NOT WARRANTED.

15 (2) IF DRUGS POSE AN IMMINENT THREAT TO THE PUBLIC HEALTH,
16 SAFETY, OR WELFARE, OR IF THE CONFIDENTIALITY OF PRESCRIPTION RECORDS
17 ARE IN IMMINENT DANGER OF BEING COMPROMISED, THE DEPARTMENT MAY:

18 (I) ISSUE AN IMPOUNDMENT ORDER; AND

19 (II) IMMEDIATELY IMPOUND DRUGS OR PRESCRIPTION RECORDS
20 WITHOUT PRIOR NOTICE TO THE PERMIT HOLDER OR AUTHORIZED PRESCRIBER.

21 (D) AN ORDER OF IMPOUNDMENT CONSTITUTES A FINAL ORDER SUBJECT TO
22 JUDICIAL REVIEW UNDER THE STATE ADMINISTRATIVE PROCEDURE ACT.

23 (E) THE DEPARTMENT SHALL PROVIDE THE PERMIT HOLDER *OR*
24 AUTHORIZED PRESCRIBER WITH A LIST OF ALL DRUGS AND PRESCRIPTION RECORDS
25 IMPOUNDED.

26 (F) THE DEPARTMENT MAY CHARGE REASONABLE FEES TO RECOVER THE
27 COSTS OF THE COLLECTION, STORAGE, AND DISPOSITION OF DRUGS OR
28 PRESCRIPTION RECORDS.

29 (G) THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE
30 DISPOSITION OF IMPOUNDED DRUGS AND PRESCRIPTION RECORDS.

31 (H) PRIOR TO ISSUING AN ORDER OF IMPOUNDMENT, THE DEPARTMENT,
32 WITH THE APPROVAL OF THE BOARD OF PHARMACY, SHALL DEVELOP REGULATIONS
33 CONCERNING:

34 (1) THE NATURE, TYPE, AND AMOUNT OF INFORMATION UPON WHICH
35 THE DEPARTMENT MAY RELY TO ISSUE AN ORDER OF IMPOUNDMENT;

1 (2) THE LEVEL OF INVESTIGATION THE DEPARTMENT MUST PURSUE TO
2 VERIFY THE INFORMATION UPON WHICH THE ORDER OF IMPOUNDMENT WAS BASED
3 UNDER SUBSECTION (B)(1)(IV) OR (V) OR (C)(2) OF THIS SECTION; AND

4 (3) THE MEASURES THE DEPARTMENT MUST PURSUE TO ATTEMPT
5 SERVICE ON THE PERMIT HOLDER OR AUTHORIZED PRESCRIBER PRIOR TO
6 IMPOUNDMENT UNDER SUBSECTION (B) OF THIS SECTION.

7 ~~(H)~~ (1) PRIOR TO DESTROYING OR TRANSFERRING IMPOUNDED DRUGS OR
8 PRESCRIPTION RECORDS, THE DEPARTMENT SHALL PUBLISH A NOTICE FOR 2
9 CONSECUTIVE WEEKS IN A DAILY NEWSPAPER THAT IS CIRCULATED LOCALLY:

10 (1) STATING THE DATE THAT THE DRUGS OR PRESCRIPTION RECORDS
11 WILL BE DESTROYED OR TRANSFERRED; AND

12 (2) DESIGNATING A DATE, TIME, AND LOCATION WHERE THE DRUGS OR
13 PRESCRIPTION RECORDS MAY BE RETRIEVED BY THE PERMIT HOLDER OR
14 AUTHORIZED PRESCRIBER IF CERTAIN CONDITIONS ARE MET.

15 ~~(I)~~ (J) A BOARD SHALL IMMEDIATELY NOTIFY THE DIVISION OF DRUG
16 CONTROL OF THE SURRENDER, SUSPENSION, OR REVOCATION OF A PERMIT
17 HOLDER'S PERMIT OR AN AUTHORIZED PRESCRIBER'S LICENSE.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2001.