

HOUSE BILL 418

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2001 Regular Session
11r0067

By: **Chairman, Environmental Matters Committee (Departmental - Health
and Mental Hygiene)**

Introduced and read first time: February 1, 2001

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 2001

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 with a list of items being impounded;
14 establishing that a reasonable fee may be charged to cover the costs of
15 impoundment, storage, and disposition of drugs and records; requiring the
16 Department to publish notice regarding the date of transferal or destruction of
17 the drugs and records and designating how, where, and when the impounded
18 items may be retrieved by the permit holder or prescriber; requiring a Health
19 Occupations Licensing Board to immediately notify the Division of Drug Control
20 upon the surrender, suspension, or revocation of a permit holder's permit or a
21 prescriber's license; defining certain terms; requiring the Department, prior to
22 issuing orders of impoundment, to adopt certain regulations; and generally
23 relating to the impounding and disposing of drugs and prescription records of
24 certain permit holders and license holders.

25 BY adding to

26 Article - Health - General

1 Section 21-1113
2 Annotated Code of Maryland
3 (2000 Replacement Volume)

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

6 **Article - Health - General**

7 21-1113.

8 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS
9 INDICATED.

10 (2) "AUTHORIZED PRESCRIBER" MEANS A LICENSED DENTIST, LICENSED
11 PHYSICIAN, LICENSED PODIATRIST, LICENSED VETERINARIAN, CERTIFIED NURSE
12 MIDWIFE TO THE EXTENT PERMITTED UNDER § 8-601 OF THE HEALTH OCCUPATIONS
13 ARTICLE, CERTIFIED NURSE PRACTITIONER TO THE EXTENT PERMITTED UNDER §
14 8-508 OF THE HEALTH OCCUPATIONS ARTICLE, OR OTHER INDIVIDUAL AUTHORIZED
15 BY LAW TO PRESCRIBE PRESCRIPTION OR NONPRESCRIPTION DRUGS OR DEVICES.

16 (3) "BOARD" MEANS A HEALTH OCCUPATION LICENSING BOARD
17 AUTHORIZED TO ISSUE A PERMIT, LICENSE, OR CERTIFICATE UNDER THE HEALTH
18 OCCUPATIONS ARTICLE.

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

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

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

26 (6) "NONPRESCRIPTION DRUG" MEANS A DRUG WHICH MAY BE SOLD
27 WITHOUT A PRESCRIPTION AND WHICH IS LABELED FOR CONSUMER USE IN
28 ACCORDANCE WITH THE REQUIREMENTS OF THE LAWS AND REGULATIONS OF THIS
29 STATE AND THE FEDERAL GOVERNMENT.

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

31 (I) A PHARMACY PERMIT, MANUFACTURER'S PERMIT, OR
32 DISTRIBUTOR'S PERMIT ISSUED BY THE STATE BOARD OF PHARMACY UNDER TITLE
33 12 OF THE HEALTH OCCUPATIONS ARTICLE; OR

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

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

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

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

9 (II) AN APPLICATION FOR A PERMIT OR LICENSE HAS BEEN
10 DENIED;

11 (III) A BOARD HAS:

12 1. DETERMINED THAT THE PERMIT HOLDER OR
13 AUTHORIZED PRESCRIBER FAILED TO COMPLY WITH A BOARD ORDER, LETTER OF
14 SURRENDER, OR LAW REGARDING THE DISPOSITION OF DRUGS OR PRESCRIPTION
15 RECORDS; AND

16 2. REQUESTED THAT THE DEPARTMENT IMPOUND THE
17 DRUGS OR PRESCRIPTION RECORDS;

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

20 (V) THE CONFIDENTIALITY OF THE PRESCRIPTION RECORDS IS IN
21 IMMINENT DANGER OF BEING COMPROMISED.

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

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

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

30 (II) PROVIDE THE PERMIT HOLDER OR THE AUTHORIZED
31 PRESCRIBER WITH AN OPPORTUNITY TO AVOID IMPOUNDMENT BY ALLOWING THE
32 PERMIT HOLDER OR AUTHORIZED PRESCRIBER TO DISPOSE OF THE DRUGS OR
33 PRESCRIPTION RECORDS IN A MANNER ACCEPTABLE TO THE DEPARTMENT;

34 (III) PROVIDE THE PERMIT HOLDER WITH AN OPPORTUNITY PRIOR
35 TO IMPOUNDMENT TO REVIEW THE NATURE, TYPE, AND AMOUNT OF INFORMATION
36 UPON WHICH THE DEPARTMENT ISSUED THE IMPOUNDMENT ORDER; AND

1 (IV) PROVIDE THE PERMIT HOLDER WITH AN OPPORTUNITY TO
2 AVOID IMPOUNDMENT BY PROVIDING THE DEPARTMENT WITH INFORMATION UPON
3 WHICH THE DEPARTMENT COULD REASONABLY CONCLUDE THAT THE
4 IMPOUNDMENT IS NOT WARRANTED.

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

8 (I) ISSUE AN IMPOUNDMENT ORDER; AND

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

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

13 (E) THE DEPARTMENT SHALL PROVIDE THE PERMIT HOLDER WITH A LIST OF
14 ALL DRUGS AND PRESCRIPTION RECORDS IMPOUNDED.

15 (F) THE DEPARTMENT MAY CHARGE REASONABLE FEES TO RECOVER THE
16 COSTS OF THE COLLECTION, STORAGE, AND DISPOSITION OF DRUGS OR
17 PRESCRIPTION RECORDS.

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

20 (H) PRIOR TO ISSUING AN ORDER OF IMPOUNDMENT, THE DEPARTMENT,
21 WITH THE APPROVAL OF THE BOARD OF PHARMACY, SHALL DEVELOP REGULATIONS
22 CONCERNING:

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

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

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

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

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

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

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

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