Act No. 154
Public Acts of 2017
Approved by the Governor
November 8, 2017
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2017

Introduced by Reps. Tedder, Cox, Vaupel, Webber, Santana, Kahle, Canfield and Glenn

ENROLLED HOUSE BILL No. 4170

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 20919 (MCL 333.20919), as amended by 2014 PA 312, and by adding part 56B and section 20192a.

The People of the State of Michigan enact:

PART 56B

PHYSICIAN ORDERS FOR SCOPE OF TREATMENT

Sec. 5671. (1) As used in this part, the words and phrases defined in sections 5672 to 5674 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.

Sec. 5672. (1) "Actual notice" includes the physical presentation of a POST form or a revoked POST form, or the electronic transmission of a POST form or a revoked POST form if the recipient of the form sends an electronic confirmation to the patient, patient representative, or attending health professional, who sent the electronic transmission, indicating that the POST form or revoked POST form has been received. Actual notice also includes knowledge of a patient's intent to revoke the POST form by a health professional who is treating the patient, by an attending health professional, or by emergency medical services personnel.

(2) "Adult foster care facility" means that term as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(3) "Advanced illness" means a medical or surgical condition with significant functional impairment that is not reversible by curative therapies and that is anticipated to progress toward death despite attempts at curative therapies or modulation.

(4) "Attending health professional" means a physician, physician's assistant, or certified nurse practitioner, who has primary responsibility for the treatment of a patient and is authorized to issue the medical orders on a POST form.

(5) "Certified nurse practitioner" means an individual licensed as a registered professional nurse under part 172 who has been issued a specialty certification as a nurse practitioner by the Michigan board of nursing under section 17210.

Sec. 5673. (1) "Emergency medical protocol" means a protocol as that term is defined in section 20908.

(2) "Emergency medical services personnel" means that term as defined in section 20904, but does not include an emergency medical services instructor-coordinator.

(3) "Guardian" means a person with the powers and duties to make medical treatment decisions on behalf of a patient to the extent granted by court order under section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.

(4) "Health facility" means a health facility or agency licensed under article 17. Health facility does not include a hospital unless specifically provided.

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

(6) "Hospital" means that term as defined in section 20106.

(7) "Information form" means the information form described in section 5676.

Sec. 5674. (1) "Medical control authority" means that term as defined in section 20906.

(2) "Patient" means an adult with an advanced illness or means an adult with another medical condition that, despite available curative therapies or modulation, compromises his or her health so as to make death within 1 year foreseeable though not a specific or predicted prognosis.

(3) "Patient advocate" means an individual presently authorized to make medical treatment decisions on behalf of a patient under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(4) "Patient representative" means a patient advocate or a guardian.

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

(6) "Physician" means that term as defined in section 17001 or 17501.

(7) "Physician orders for scope of treatment form" or "POST form" means the standardized POST form described in section 5676. A POST form is not an advance health care directive.

(8) "Physician's assistant" means an individual licensed as a physician's assistant under part 170 or part 175.

(9) "Residential setting" means a setting outside of a hospital, including, but not limited to, an adult foster care facility.

(10) "Ward" means that term as defined in section 1108 of the estates and protected individuals code, 1998 PA 386, MCL 700.1108.

Sec. 5675. (1) Not later than 90 days after the effective date of the amendatory act that added this part, the director shall appoint members of and convene an ad hoc advisory committee. The committee must consist of 11 members appointed as follows:

(a) Four members of the committee must include 1 individual representing each of the following:

(*i*) A health facility or an adult foster care facility, or an organization or professional association representing health facilities or adult foster care facilities.

(*ii*) A palliative care provider.

(*iii*) Emergency medical services personnel.

(*iv*) A medical control authority.

(b) Seven members of the committee may include, but are not limited to, individuals representing the following:

(*i*) A health professional.

(*ii*) A patient advocacy organization.

(2) Within 180 days after the committee is convened, the committee shall make recommendations to the department on all of the following:

(a) Subject to section 5676, the creation of a standardized POST form.

(b) Medical orders to be included on the POST form that relate to emergency and nonemergency situations.

(c) Subject to section 5676, the creation of an information form.

(d) The procedures for the use of a POST form within a residential setting.

(e) The circumstances under which a photocopy, facsimile, or digital image of a completed POST form is considered valid for purposes of a health professional, a health facility, an adult care facility, or emergency medical services personnel complying with the orders for medical treatment on the POST form.

(3) After the department receives the recommendations from the committee under subsection (2), the committee is abolished.

(4) As used in this section, "committee" means the ad hoc advisory committee appointed under subsection (1).

Sec. 5676. (1) The department, after considering the recommendations of the advisory committee under section 5675, shall do all of the following:

(a) Develop a standardized POST form that has a distinct format and is printed on a specific stock and color of paper to make the form easily identifiable. The department shall include on the POST form at least all of the following:

(*i*) A space for the printed name of the patient, the patient's age, and the patient's diagnosis or medical condition that warrants the medical orders on the POST form.

(*ii*) A space for the signature of the patient or the patient representative who consents to the medical orders indicated on the POST form and a space to indicate the date the patient or the patient representative signed the form.

(*iii*) A space for the printed name and signature of the attending health professional who issues the medical orders on the POST form.

(*iv*) Sections containing medical orders that direct specific types or levels of treatment to be provided in a setting outside of a hospital to which a patient or a patient representative may provide consent.

(*v*) A space for the date and the initials of either the attending health professional and the patient or the attending health professional and the patient representative. The POST form must also include a statement that, by dating and initialing the POST form, the individuals described in this subparagraph confirm that the medical orders on the form remain in effect.

(*vi*) A statement that, within a time frame established by the department by rule, the POST form must be reviewed, dated, and initialed by either the attending health professional and the patient or the attending health professional and the patient representative, if any of the following have occurred:

(A) One year has expired since the patient and the attending health professional or the patient representative and the attending health professional have signed or initialed the POST form.

(B) There has been an unexpected change in the patient's medical condition.

(C) The patient is transferred from 1 care setting or care level to another care setting or care level.

(D) The patient's treatment preferences change.

(E) The patient's attending health professional changes.

(*vii*) A statement that a patient or a patient representative has the option of executing a POST form and that consenting to the medical orders on the POST form is voluntary.

(*viii*) A statement that the POST form is void if any information described in subparagraph (*i*), (*ii*), or (*iii*) is not provided on the form or if a requirement described in subparagraph (*vi*) is not met.

(*ix*) A statement that if a section on the POST form regarding a specific type or level of treatment is left blank, the blank section will be interpreted as authorizing full treatment for the patient for that treatment, but a blank section on the POST form regarding a specific type or level of treatment does not invalidate the entire form or other medical orders on the form.

(*x*) A space for the printed name and contact information of the patient representative, if applicable.

(b) Develop an information form. The department shall include on the information form at least all of the following:

(*i*) An introductory statement in substantially the following form:

"The POST form is intended to be used as part of an advance care planning process. The POST form is not intended to be used as a stand-alone advance health care directive that unilaterally expresses the patient's medical treatment wishes. The POST form contains medical orders that are jointly agreed to by the patient and the attending health professional or the patient representative and the attending health professional. The medical orders on the POST form reflect both the patient's expressed wishes or best interests and the attending health professional's medical advice or

recommendation. An advance care planning process that uses the POST form must recommend that the patient consider designating an individual to serve as the patient's patient advocate to make future medical decisions on behalf of the patient if the patient becomes unable to do so.".

(*ii*) An explanation of who is considered a patient with an advanced illness for purposes of executing a POST form.

(*iii*) An explanation of how a patient advocate is designated under sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(*iv*) A statement indicating that, by signing the information form, the patient or the patient representative acknowledges that he or she had the opportunity to review the information form before executing a POST form.

(*v*) A space for the signature of the patient or the patient representative and a space to indicate the date the patient or the patient representative reviewed the information form.

(c) Promulgate rules to implement this part. The rules must include, but are not limited to, the procedures for the use of a POST form within a residential setting and the circumstances under which a photocopy, facsimile, or digital image of a completed POST form will be considered valid for purposes of a health professional, a health facility, an adult foster care facility, or emergency medical services personnel complying with the medical orders on the form.

(2) The department may publish information or materials regarding the POST form on the department's website.

Sec. 5677. (1) The following individuals may consent to the medical orders contained on a POST form:

(a) If a patient is capable of participating in the medical treatment decisions included on the POST form, the patient.

(b) Subject to subsection (2), if a patient is not capable of participating in the medical treatment decisions included on the POST form, either of the following:

(*i*) A patient representative who is a patient advocate.

(*ii*) A patient representative who is a guardian after complying with section 5314 of the estates and protected individuals code, 1998 PA 386, MCL 700.5314.

(2) If a patient representative is consenting to the medical orders contained on the POST form, the patient representative shall comply with the patient's expressed wishes. If the patient's wishes are unknown, the patient representative shall consent to the medical orders in the following manner:

(a) If the patient representative is a guardian, in a manner that is consistent with the patient's best interest.

(b) If the patient representative is a patient advocate, subject to section 5509(1)(e) of the estates and protected individuals code, 1998 PA 386, MCL 700.5509.

(3) Before a patient and an attending health professional or a patient representative and an attending health professional sign a POST form, the attending health professional shall provide the patient or the patient representative with the information form and, if the patient does not have a patient representative, the attending health professional shall recommend to the patient that the patient consider designating an individual to serve as the patient's patient advocate to make future medical decisions on behalf of the patient if the patient becomes unable to do so. The attending health professional shall also consult with the patient or patient representative and explain to the patient or patient representative the nature and content of the POST form and the medical implications of the medical orders contained on the POST form. The patient or patient representative shall sign the information form at the time he or she signs the POST form under this subsection. The attending health professional who signs the POST form shall place the information form that is signed by the patient or the patient representative in the patient's permanent medical record. The attending health professional who signs the POST form shall also obtain a copy or duplicate of the POST form and make that copy or duplicate part of the patient's permanent medical record. The patient or the patient representative shall maintain possession of the original POST form.

Sec. 5678. (1) The following individuals may revoke a POST form under the following circumstances:

(a) A patient may revoke the POST form at any time and in any manner that the patient is able to communicate his or her intent to revoke the POST form. If the patient's revocation is not in writing, an individual who witnesses the patient's expressed intent to revoke the POST form shall describe in writing the circumstances of the revocation, sign the writing, and provide the writing to the individuals described in subsection (2), as applicable.

(b) The patient representative may revoke the POST form at any time the patient representative considers revoking the POST form to be consistent with the patient's wishes or, if the patient's wishes are unknown, in the patient's best interest.

(c) If a change in the patient's medical condition makes the medical orders on the POST form contrary to generally accepted health care standards, the attending health professional may revoke the POST form. If an attending health professional revokes a POST form under this subdivision, he or she shall take reasonable actions to notify the patient or the patient representative of the revocation and the change in the patient's medical condition that warranted the revocation of the POST form.

(2) Upon revocation of the POST form, the patient, patient representative, or attending health professional shall write "revoked" over the signature of the patient or patient representative, as applicable, and over the signature of the attending health professional, on the POST form that is contained in the patient's permanent medical record and on the original POST form if the original POST form is available. If a patient or patient representative revokes the POST form, the patient or patient representative shall take reasonable actions to notify 1 or more of the following of the revocation:

(a) The attending health professional.

(b) A health professional who is treating the patient.

(c) The health facility that is directly responsible for the medical treatment or care and custody of the patient.

(d) The patient.

Sec. 5679. (1) In an acute care setting, a health professional who is treating the patient may use a completed POST form as a communication tool.

(2) Emergency medical services personnel shall provide or withhold treatment to a patient according to the orders on a POST form unless any of the following apply:

(a) The emergency medical services being provided by the emergency medical services personnel are necessitated by an injury or medical condition that is unrelated to the diagnosis or medical condition that is indicated on the patient's POST form.

(b) The orders on the POST form request medical treatment that is contrary to generally accepted health care standards or emergency medical protocols.

(c) The POST form contains a medical order regarding the initiation of resuscitation if the patient suffers cessation of both spontaneous respiration and circulation, and the emergency medical services personnel has actual notice of a do-not-resuscitate order that was executed under the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, after the POST form was validly executed. As used in this subdivision, "actual notice" means that term as defined in section 2 of the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1052.

(d) The POST form has been revoked in the manner provided in this part and the emergency medical services personnel has actual notice of the revocation.

(3) If a health professional or health facility is unwilling to comply with the medical orders on a validly executed POST form because of a policy, religious belief, or moral conviction, the health professional or health facility shall take all reasonable steps to refer or transfer the patient to another health professional or health facility. If an adult foster care facility is unwilling to comply with the medical orders on a validly executed POST form for the reasons described in this subsection, the adult foster care facility shall take all reasonable steps to refer or transfer the patient to another adult foster care facility as provided in section 26c of the adult foster care facility licensing act, 1979 PA 218, MCL 400.726c.

Sec. 5680. A person is not subject to criminal prosecution, civil liability, or professional disciplinary action for any of the following:

(a) Providing medical treatment that is contrary to the medical orders indicated on a POST form if the person did not have actual notice of the POST form.

(b) Providing medical treatment that is consistent with the medical orders indicated on a POST form if the person did not have actual notice that the POST form was revoked.

(c) Providing emergency medical services consistent with generally accepted health care standards or emergency medical protocols as provided in section 5679, regardless of the medical orders indicated on the POST form.

Sec. 5681. (1) If a POST form is validly executed after a patient advocate designation that contains written directives regarding medical treatment, or another advance health care directive that contains written directives regarding medical treatment, the medical orders indicated on the POST form are presumed to express the patient's current wishes.

(2) If a POST form is validly executed after a do-not-resuscitate order is executed under the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, the medical orders indicated on the POST form are presumed to express the patient's current wishes.

Sec. 5682. If an individual has reason to believe that a POST form has been executed contrary to the wishes of the patient or, if the patient is a ward, contrary to the wishes or best interests of the ward, the individual may petition the probate court to have the POST form and the conditions of its execution reviewed. If the probate court finds that the POST form has been executed contrary to the wishes of the patient or, if the patient is a ward, contrary to the wishes or best interests of the ward, the probate court shall issue an injunction voiding the effectiveness of the POST form and prohibiting compliance with the POST form.

Sec. 5683. (1) A life insurer shall not do any of the following because of the execution or implementation of a POST form:

(a) Refuse to provide or continue coverage to the patient.

(b) Charge the patient a higher premium.

(c) Offer a patient different policy terms because the patient has executed a POST form.

(d) Consider the terms of an existing policy of life insurance to have been breached or modified.

(e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(2) A health insurer shall not do any of the following:

(a) Require the execution of a POST form to maintain or be eligible for coverage.

(b) Charge a different premium based on whether a patient or patient representative has executed a POST form.

(c) Consider the terms of an existing policy to have been breached or modified if the patient or patient representative has executed a POST form.

Sec. 5684. (1) The provisions of this part are cumulative and do not impair or supersede a legal right that a patient or patient representative may have to consent to or refuse medical treatment for himself or herself or on behalf of another.

(2) This part does not create a presumption that a patient who has executed a POST form intends to consent to or refuse medical treatment that is not addressed in the medical orders on the POST form.

(3) This part does not create a presumption that a patient or patient representative who has not executed a POST form intends to consent to or refuse any type of medical treatment.

Sec. 5685. (1) By 3 years after the effective date of the amendatory act that added this part, the director shall appoint an ad hoc advisory committee consisting of 11 members in the same manner as the ad hoc advisory committee is required to be appointed under section 5675.

(2) The director shall call the first meeting of the committee.

(3) Within 90 days after the first meeting of the committee is convened, the committee shall submit a report to the department that contains recommendations on all of the following:

(a) Any changes to the rules promulgated under section 5676 that the committee considers necessary or appropriate.

(b) Any changes to the POST form or the information form that the committee considers necessary or appropriate.

(c) Any legislative changes to this part that the committee considers necessary or appropriate.

(4) After the department receives the recommendations from the committee under subsection (3), the committee is abolished.

(5) As used in this section, "committee" means the ad hoc advisory committee appointed under subsection (1).

Sec. 20192a. A health facility or agency shall not require the execution of a POST form under part 56B as a condition for admission or the receipt of services.

Sec. 20919. (1) A medical control authority shall establish written protocols for the practice of life support agencies and licensed emergency medical services personnel within its region. The medical control authority shall develop and adopt the protocols required under this section in accordance with procedures established by the department and shall include all of the following:

(a) The acts, tasks, or functions that may be performed by each type of emergency medical services personnel licensed under this part.

(b) Medical protocols to ensure the appropriate dispatching of a life support agency based upon medical need and the capability of the emergency medical services system.

(c) Protocols for complying with the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067.

(d) Protocols defining the process, actions, and sanctions a medical control authority may use in holding a life support agency or personnel accountable.

(e) Protocols to ensure that if the medical control authority determines that an immediate threat to the public health, safety, or welfare exists, appropriate action to remove medical control can immediately be taken until the medical control authority has had the opportunity to review the matter at a medical control authority hearing. The protocols must require that the hearing is held within 3 business days after the medical control authority's determination.

(f) Protocols to ensure that if medical control has been removed from a participant in an emergency medical services system, the participant does not provide prehospital care until medical control is reinstated and that the medical control authority that removed the medical control notifies the department of the removal within 1 business day.

(g) Protocols to ensure that a quality improvement program is in place within a medical control authority and provides data protection as provided in 1967 PA 270, MCL 331.531 to 331.534.

(h) Protocols to ensure that an appropriate appeals process is in place.

(i) Protocols to ensure that each life support agency that provides basic life support, limited advanced life support, or advanced life support is equipped with epinephrine or epinephrine auto-injectors and that each emergency services personnel authorized to provide those services is properly trained to recognize an anaphylactic reaction, to administer the epinephrine, and to dispose of the epinephrine auto-injector or vial.

(j) Protocols to ensure that each life support vehicle that is dispatched and responding to provide medical first response life support, basic life support, or limited advanced life support is equipped with an automated external defibrillator and that each emergency medical services personnel is properly trained to utilize the automated external defibrillator.

(k) Except as otherwise provided in this subdivision, before October 15, 2015, protocols to ensure that each life support vehicle that is dispatched and responding to provide medical first response life support, basic life support, or limited advanced life support is equipped with opioid antagonists and that each emergency medical services personnel is properly trained to administer opioid antagonists. Beginning October 14, 2017, a medical control authority, at its discretion, may rescind or continue the protocol adopted under this subdivision.

(*l*) Protocols for complying with part 56B.

(2) A medical control authority shall not establish a protocol under this section that conflicts with the Michigan do-not-resuscitate procedure act, 1996 PA 193, MCL 333.1051 to 333.1067, or part 56B.

(3) The department shall establish procedures for the development and adoption of written protocols under this section. The procedures must include at least all of the following requirements:

(a) At least 60 days before adoption of a protocol, the medical control authority shall circulate a written draft of the proposed protocol to all significantly affected persons within the emergency medical services system served by the medical control authority and submit the written draft to the department for approval.

(b) The department shall review a proposed protocol for consistency with other protocols concerning similar subject matter that have already been established in this state and shall consider any written comments received from interested persons in its review.

(c) Within 60 days after receiving a written draft of a proposed protocol from a medical control authority, the department shall provide a written recommendation to the medical control authority with any comments or suggested changes on the proposed protocol. If the department does not respond within 60 days after receiving the written draft, the proposed protocol is considered to be approved by the department.

(d) After department approval of a proposed protocol, the medical control authority may formally adopt and implement the protocol.

(e) A medical control authority may establish an emergency protocol necessary to preserve the health or safety of individuals within its region in response to a present medical emergency or disaster without following the procedures established by the department under this subsection for an ordinary protocol. An emergency protocol established under this subdivision is effective only for a limited period and does not take permanent effect unless it is approved according to the procedures established by the department under this subsection.

(4) A medical control authority shall provide an opportunity for an affected participant in an emergency medical services system to appeal a decision of the medical control authority. Following appeal, the medical control authority may affirm, suspend, or revoke its original decision. After appeals to the medical control authority have been exhausted, the affected participant in an emergency medical services system may appeal the medical control authority's decision to the state emergency medical services coordination committee created in section 20915. The state emergency medical services coordination committee shall issue an opinion on whether the actions or decisions of the medical control authority are in accordance with the department-approved protocols of the medical control authority and state law. If the state emergency medical services coordination committee determines in its opinion that the actions or decisions of the medical control authority are not in accordance with the medical control authority's department-approved protocols or with state law, the state emergency medical services coordination committee shall recommend that the department take any enforcement action authorized under this code.

(5) If adopted in protocols approved by the department, a medical control authority may require life support agencies within its region to meet reasonable additional standards for equipment and personnel, other than medical first responders, that may be more stringent than are otherwise required under this part. If a medical control authority proposes a protocol that establishes additional standards for equipment and personnel, the medical control authority and the department shall consider the medical and economic impact on the local community, the need for communities

to do long-term planning, and the availability of personnel. If either the medical control authority or the department determines that negative medical or economic impacts outweigh the benefits of those additional standards as they affect public health, safety, and welfare, the medical control authority shall not adopt and the department shall not approve protocols containing those additional standards.

(6) If adopted in protocols approved by the department, a medical control authority may require medical first response services and licensed medical first responders within its region to meet additional standards for equipment and personnel to ensure that each medical first response service is equipped with an epinephrine auto-injector, and that each licensed medical first responder is properly trained to recognize an anaphylactic reaction and to administer and dispose of the epinephrine auto-injector, if a life support agency that provides basic life support, limited advanced life support, or advanced life support is not readily available in that location.

(7) If a decision of the medical control authority under subsection (5) or (6) is appealed by an affected person, the medical control authority shall make available, in writing, the medical and economic information it considered in making its decision. On appeal, the state emergency medical services coordination committee created in section 20915 shall review this information under subsection (4) and shall issue its findings in writing.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

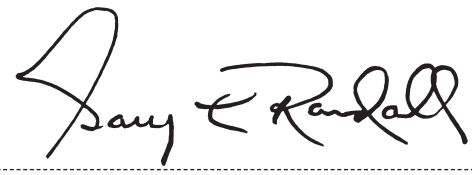
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 99th Legislature are enacted into law:

(a) House Bill No. 4171.

(b) House Bill No. 4173.

(c) House Bill No. 4174.

This act is ordered to take immediate effect.



Clerk of the House of Representatives

Secretary of the Senate

Approved .....

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Governor