

# SENATE BILL No. 573

October 4, 1989, Introduced by Senators N. SMITH,  
GEAKE, BINSFELD, MACK, CARL, GAST and WELBORN  
and referred to the Committee on Judiciary.

A bill to amend sections 7401, 7402, 7403, 7404, and 7407 of  
Act No. 368 of the Public Acts of 1978, entitled as amended  
"Public health code,"

sections 7401 and 7403 as amended by Act No. 143 of the Public  
Acts of 1989 and sections 7402 and 7407 as amended by Act No. 60  
of the Public Acts of 1988, being sections 333.7401, 333.7402,  
333.7403, 333.7404, and 333.7407 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 7401, 7402, 7403, 7404, and 7407 of Act  
2       No. 368 of the Public Acts of 1978, sections 7401 and 7403 as  
3       amended by Act No. 143 of the Public Acts of 1989 and sections  
4       7402 and 7407 as amended by Act No. 60 of the Public Acts of  
5       1988, being sections 333.7401, 333.7402, 333.7403, 333.7404, and  
6       333.7407 of the Michigan Compiled Laws, are amended to read as  
7       follows:

1       Sec. 7401. (1) Except as authorized by this article, a  
2 person shall not manufacture, deliver, or possess with intent to  
3 manufacture or deliver, a controlled substance, a prescription  
4 form, an official prescription form, or a counterfeit prescrip-  
5 tion form. A practitioner licensed by the administrator under  
6 this article shall not dispense, prescribe, or administer a con-  
7 trolled substance for other than legitimate and professionally  
8 recognized therapeutic or scientific purposes or outside the  
9 scope of practice of the practitioner, licensee, or applicant.

10       (2) A person who violates this section as to:

11       (a) A controlled substance classified in schedule 1 or 2  
12 which is either a narcotic drug or described in section 7214(a)  
13 (iv) and:

14       (i) Which is in an amount of 650 grams or more of any mix-  
15 ture containing that controlled substance is guilty of a felony  
16 and shall be imprisoned for life.

17       (ii) Which is in an amount of 225 grams or more, but less  
18 than 650 grams, of any mixture containing that controlled sub-  
19 stance is guilty of a felony and shall be imprisoned for not less  
20 than 20 years nor more than 30 years.

21       (iii) Which is in an amount of 50 grams or more, but less  
22 than 225 grams, of any mixture containing that controlled sub-  
23 stance is guilty of a felony and shall be imprisoned for not less  
24 than 10 years nor more than 20 years.

25       (iv) Which is in an amount less than 50 grams, of any mix-  
26 ture containing that substance is guilty of a felony and shall be  
27 imprisoned for not less than 1 year nor more than 20 years, and

1 may be fined not more than \$25,000.00, or placed on probation for  
2 life.

3 (b) Any other controlled substance classified in schedule 1,  
4 2, or 3, except marihuana, is guilty of a felony, punishable by  
5 imprisonment for not more than 7 years, or a fine of not more  
6 than \$5,000.00, or both.

7 (c) A substance classified in schedule 4 or marihuana, is  
8 guilty of a felony, punishable by imprisonment for not more than  
9 4 years, or a fine of not more than \$2,000.00, or both.

10 (d) A substance classified in schedule 5, is guilty of a  
11 felony, punishable by imprisonment for not more than 2 years, or  
12 a fine of not more than \$2,000.00, or both.

13 (e) An official prescription form or a counterfeit official  
14 prescription form, is guilty of a felony, punishable by imprison-  
15 ment for not more than 20 years, or a fine of not more than  
16 \$25,000.00, or both.

17 (f) A prescription form or a counterfeit prescription form  
18 other than an official prescription form or a counterfeit offi-  
19 cial prescription form, is guilty of a felony, punishable by  
20 imprisonment for not more than 7 years, or a fine of not more  
21 than \$5,000.00, or both.

22 (3) A term of imprisonment imposed pursuant to subsection  
23 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be  
24 imposed to run consecutively with any term of imprisonment  
25 imposed for the commission of another felony. An individual  
26 subject to a mandatory term of imprisonment under subsection  
27 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not

1 be eligible for probation, suspension of that sentence, or parole  
2 during that mandatory term, except and only to the extent that  
3 those provisions permit probation for life, and shall not receive  
4 a reduction in that mandatory term of imprisonment by disci-  
5 plinary credits or any other type of sentence credit reduction.

6 (4) The court may depart from the minimum term of imprison-  
7 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if  
8 the court finds on the record that there are substantial and com-  
9 pelling reasons to do so.

10 (5) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND  
11 FOR A PERIOD OF NOT LESS THAN 1 YEAR THE MOTOR VEHICLE OPERATOR'S  
12 LICENSE OR CHAUFFEUR'S LICENSE OF A PERSON CONVICTED OF, OR FOUND  
13 RESPONSIBLE BY A PROBATE COURT FOR, VIOLATING OR ATTEMPTING TO  
14 VIOLATE THIS SECTION. IF THE PERSON IS NOT LICENSED TO OPERATE A  
15 MOTOR VEHICLE IN THIS STATE, THE COURT SHALL ORDER THE SECRETARY  
16 OF STATE TO DENY ISSUANCE OF AN OPERATOR'S LICENSE OR CHAUFFEUR'S  
17 LICENSE TO THAT PERSON FOR A PERIOD OF NOT LESS THAN 1 YEAR.

18 Sec. 7402. (1) Except as authorized by this article, a  
19 person shall not create, deliver, or possess with intent to  
20 deliver, a counterfeit substance or a controlled substance analo-  
21 gue intended for human consumption. This section shall not apply  
22 to a person who manufactures or distributes a substance in con-  
23 formance with the provisions of an approved new drug application  
24 or an exemption for investigational use within the meaning of  
25 section 505 of the federal food, drug, and cosmetic act,  
26 21 U.S.C. 355. For purposes of this section, section 505 of the  
27 federal food, drug, and cosmetic act shall be applicable to the

1 introduction or delivery for introduction of any new drug into  
2 intrastate, interstate, or foreign commerce.

3 (2) A person who violates this section as to:

4 (a) A counterfeit substance classified in schedule 1 or 2  
5 which is either a narcotic drug or described in section  
6 7214(a)(iv), is guilty of a felony, punishable by imprisonment  
7 for not more than 10 years, or a fine of not more than  
8 \$10,000.00, or both.

9 (b) Any other counterfeit substance classified in schedule  
10 1, 2, or 3, is guilty of a felony, punishable by imprisonment for  
11 not more than 5 years, or a fine of not more than \$5,000.00, or  
12 both.

13 (c) A counterfeit substance classified in schedule 4, is  
14 guilty of a felony, punishable by imprisonment for not more than  
15 4 years, or a fine of not more than \$2,000.00, or both.

16 (d) A counterfeit substance classified in schedule 5, is  
17 guilty of a felony, punishable by imprisonment for not more than  
18 2 years, or a fine of not more than \$2,000.00, or both.

19 (e) A controlled substance analogue, is guilty of a felony,  
20 punishable by imprisonment for not more than 15 years, or a fine  
21 of not more than \$250,000.00, or both.

22 (3) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND  
23 FOR A PERIOD OF NOT LESS THAN 1 YEAR THE MOTOR VEHICLE OPERATOR'S  
24 LICENSE OR CHAUFFEUR'S LICENSE OF A PERSON CONVICTED OF, OR FOUND  
25 RESPONSIBLE BY A PROBATE COURT FOR, VIOLATING OR ATTEMPTING TO  
26 VIOLATE THIS SECTION. IF THE PERSON IS NOT LICENSED TO OPERATE A  
27 MOTOR VEHICLE IN THIS STATE, THE COURT SHALL ORDER THE SECRETARY

1 OF STATE TO DENY ISSUANCE OF AN OPERATOR'S LICENSE OR CHAUFFEUR'S  
2 LICENSE TO THAT PERSON FOR A PERIOD OF NOT LESS THAN 1 YEAR.

3       Sec. 7403. (1) A person shall not knowingly or intention-  
4 ally possess a controlled substance or an official prescription  
5 form or a prescription form unless the controlled substance,  
6 official prescription form, or prescription form was obtained  
7 directly from, or pursuant to, a valid prescription or order of a  
8 practitioner while acting in the course of the practitioner's  
9 professional practice, or except as otherwise authorized by this  
10 article.

11       (2) A person who violates this section as to:

12       (a) A controlled substance classified in schedule 1 or 2  
13 which is either a narcotic drug or described in section  
14 7214(a)(iv), and:

15       (i) Which is in an amount of 650 grams or more of any mix-  
16 ture containing that controlled substance is guilty of a felony  
17 and shall be imprisoned for life.

18       (ii) Which is in an amount of 225 grams or more, but less  
19 than 650 grams, of any mixture containing that controlled sub-  
20 stance is guilty of a felony and shall be imprisoned for not less  
21 than 20 years nor more than 30 years.

22       (iii) Which is in an amount of 50 grams or more, but less  
23 than 225 grams, of any mixture containing that controlled sub-  
24 stance is guilty of a felony and shall be imprisoned for not less  
25 than 10 years nor more than 20 years.

26       (iv) Which is in an amount of 25 grams or more, but less  
27 than 50 grams of any mixture containing that controlled substance

1 is guilty of a felony, and shall be imprisoned for not less than  
2 1 year and not more than 4 years, and may be fined not more than  
3 \$25,000.00 or placed on probation for life.

4 (v) Which is in an amount less than 25 grams of any mixture  
5 containing that controlled substance is guilty of a felony, pun-  
6 ishable by imprisonment for not more than 4 years or a fine of  
7 not more than \$25,000.00, or both.

8 (b) A controlled substance classified in schedule 1, 2, 3,  
9 or 4, except a controlled substance classified in schedule 1 for  
10 which a penalty is prescribed in subdivision (a), (c), or (d), is  
11 guilty of a felony, punishable by imprisonment for not more than  
12 2 years, or a fine of not more than \$2,000.00, or both.

13 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
14 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
15 sified in schedule 5, is guilty of a misdemeanor, punishable by  
16 imprisonment for not more than 1 year, or a fine of not more than  
17 \$1,000.00, or both.

18 (d) Marihuana, is guilty of a misdemeanor, punishable by  
19 imprisonment for not more than 1 year, or a fine of not more than  
20 \$1,000.00, or both.

21 (e) An official prescription form, is guilty of a felony,  
22 punishable by imprisonment for not more than 1 year, or a fine of  
23 not more than \$2,000.00, or both.

24 (f) A prescription form other than an official prescription  
25 form, is guilty of a misdemeanor, punishable by imprisonment for  
26 not more than 1 year, or a fine of not more than \$1,000.00, or  
27 both.

1       (3) The court may depart from the minimum term of  
2 imprisonment authorized under subsection ~~(2)(iii)~~ (2)(A)(ii),  
3 (iii), or (iv) if the court finds on the record that there are  
4 substantial and compelling reasons to do so.

5       (4) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND  
6 FOR A PERIOD OF NOT LESS THAN 1 YEAR THE MOTOR VEHICLE OPERATOR'S  
7 LICENSE OR CHAUFFEUR'S LICENSE OF A PERSON CONVICTED OF, OR FOUND  
8 RESPONSIBLE BY A PROBATE COURT FOR, VIOLATING OR ATTEMPTING TO  
9 VIOLATE THIS SECTION. IF THE PERSON IS NOT LICENSED TO OPERATE A  
10 MOTOR VEHICLE IN THIS STATE, THE COURT SHALL ORDER THE SECRETARY  
11 OF STATE TO DENY ISSUANCE OF AN OPERATOR'S LICENSE OR CHAUFFEUR'S  
12 LICENSE TO THAT PERSON FOR A PERIOD OF NOT LESS THAN 1 YEAR.

13       Sec. 7404. (1) A person shall not use a controlled sub-  
14 stance unless the substance was obtained directly from, or pursu-  
15 ant to, a valid prescription or order of a practitioner while  
16 acting in the course of the practitioner's professional practice,  
17 or except as otherwise authorized by this article.

18       (2) A person who violates this section as to:

19       (a) A controlled substance classified in schedule 1 or 2  
20 which is either a narcotic drug or described in section  
21 7214(a)(iv), is guilty of a misdemeanor punishable by imprison-  
22 ment for not more than 1 year, or a fine of not more than  
23 \$2,000.00, or both.

24       (b) A controlled substance classified in schedule 1, 2, 3,  
25 or 4, except a controlled substance classified in schedule 1 for  
26 which a penalty is prescribed in subdivision (a), (c), or (d) is



1 guilty of a misdemeanor, punishable by imprisonment for not more  
2 than 1 year, or a fine of not more than \$1,000.00, or both.

3 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
4 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
5 sified in schedule 5, is guilty of a misdemeanor, punishable by  
6 imprisonment for not more than 6 months, or a fine of not more  
7 than \$500.00, or both.

8 (d) Marihuana, is guilty of a misdemeanor, punishable by  
9 imprisonment for not more than 90 days, or a fine of not more  
10 than \$100.00, or both.

11 (3) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND  
12 FOR A PERIOD OF NOT LESS THAN 1 YEAR THE MOTOR VEHICLE OPERATOR'S  
13 LICENSE OR CHAUFFEUR'S LICENSE OF A PERSON CONVICTED OF, OR FOUND  
14 RESPONSIBLE BY A PROBATE COURT FOR, VIOLATING OR ATTEMPTING TO  
15 VIOLATE THIS SECTION. IF THE PERSON IS NOT LICENSED TO OPERATE A  
16 MOTOR VEHICLE IN THIS STATE, THE COURT SHALL ORDER THE SECRETARY  
17 OF STATE TO DENY ISSUANCE OF AN OPERATOR'S LICENSE OR CHAUFFEUR'S  
18 LICENSE TO THAT PERSON FOR A PERIOD OF NOT LESS THAN 1 YEAR.

19 Sec. 7407. (1) A person shall not knowingly or  
20 intentionally:

21 (a) Distribute as a licensee a controlled substance classi-  
22 fied in schedule 1 or 2, except pursuant to an order form as  
23 required by section 7331.

24 (b) Use in the course of the manufacture or distribution of  
25 a controlled substance a license number which is fictitious,  
26 revoked, suspended, or issued to another person.

1 (c) Acquire or obtain possession of a controlled substance  
2 by misrepresentation, fraud, forgery, deception, or subterfuge.

3 (d) Furnish false or fraudulent material information in, or  
4 omit any material information from, an application, report, offi-  
5 cial prescription form, or other document required to be kept or  
6 filed under this article, or any record required to be kept by  
7 this article.

8 (e) Make, distribute, or possess a punch, die, plate, stone,  
9 or other thing designed to print, imprint, or reproduce the  
10 trademark, trade name, or other identifying mark, imprint, or  
11 device of another or any likeness of any of the foregoing upon a  
12 drug or container or labeling thereof so as to render the drug a  
13 counterfeit substance.

14 (f) Knowingly and intentionally give, permit, or obtain  
15 access to information submitted to the department of licensing  
16 and regulation under section 7334, except as otherwise authorized  
17 by this article.

18 (g) Possess counterfeit prescription forms, except as an  
19 agent of government while engaged in the enforcement of this  
20 part.

21 (2) A person shall not refuse or knowingly fail to make,  
22 keep, or furnish any record, notification, order form, statement,  
23 invoice, or other information required under this article.

24 (3) A person who violates this section is guilty of a  
25 felony, punishable by imprisonment for not more than 4 years, or  
26 a fine of not more than \$30,000.00, or both.

1       (4) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND  
2 FOR A PERIOD OF NOT LESS THAN 1 YEAR THE MOTOR VEHICLE OPERATOR'S  
3 LICENSE OR CHAUFFEUR'S LICENSE OF A PERSON CONVICTED OF, OR FOUND  
4 RESPONSIBLE BY A PROBATE COURT FOR, VIOLATING OR ATTEMPTING TO  
5 VIOLATE THIS SECTION. IF THE PERSON IS NOT LICENSED TO OPERATE A  
6 MOTOR VEHICLE IN THIS STATE, THE COURT SHALL ORDER THE SECRETARY  
7 OF STATE TO DENY ISSUANCE OF AN OPERATOR'S LICENSE OR CHAUFFEUR'S  
8 LICENSE TO THAT PERSON FOR A PERIOD OF NOT LESS THAN 1 YEAR.