

HOUSE BILL No. 5922

June 9, 1992, Introduced by Reps. Bodem, Bartnik, Jamian, Hoffman, McBryde, London, Dalman, Strand, Fitzgerald, Jaye, Middaugh, Gnodtke, McNutt, Rocca, Bender, Johnson, Horton, Robertson, Nye, Oxender, Bandstra, Brackenridge, Dolan, Middleton, Gernaat, Shugars, Bankes, DeLange, Willis Bullard, Martin, Van Singel, Munsell, Sikkema, Bobier, Walberg and Porreca and referred to the Committee on Judiciary.

A bill to amend sections 7104 and 7402 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 60 of the Public Acts of 1988, being sections 333.7104 and 333.7402 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7104 and 7402 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 60 of the Public Acts
3 of 1988, being sections 333.7104 and 333.7402 of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 7104. (1) ~~"Bureau" means the drug enforcement admin-~~
6 ~~istration, United States department of justice, or its successor~~
7 ~~agency.~~ (2) "Controlled substance" means a drug, substance, or
8 immediate precursor INCLUDED in schedules 1 to 5 of part 72, AND
9 INCLUDES ANY DRUG, SUBSTANCE, OR IMMEDIATE PRECURSOR THE UNITED

1 STATES ATTORNEY GENERAL CLASSIFIES AS A CONTROLLED SUBSTANCE
2 PURSUANT TO SECTION 201 OF PART B OF TITLE II OF THE COMPREHEN-
3 SIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970, PUBLIC LAW
4 91-513, 21 U.S.C. 811.

5 (2) ~~(3)~~ "Controlled substance analogue" means a substance
6 ~~other than a controlled substance that has a~~ THE chemical
7 structure OF WHICH IS substantially similar to ~~that~~ THE CHEMI-
8 CAL STRUCTURE of a controlled substance INCLUDED in schedule 1 or
9 ~~2 or that was specifically designed to produce an effect sub-~~
10 ~~stantially similar to that of a controlled substance in schedule~~
11 ~~1 or 2. Controlled substance analogue includes, but is not~~
12 ~~limited to, the following chemical classes: phenethylamines,~~
13 ~~n-substituted piperidines, morphinans, ecgonines, quinazoli-~~
14 ~~nones, substituted indoles, and arylcycloalkylamines.~~ AND THAT
15 HAS A NARCOTIC STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON
16 THE CENTRAL NERVOUS SYSTEM SUBSTANTIALLY SIMILAR TO THE NARCOTIC
17 STIMULANT, DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL
18 NERVOUS SYSTEM OF A CONTROLLED SUBSTANCE INCLUDED IN SCHEDULE 1
19 OR 2 OR, WITH RESPECT TO A PARTICULAR INDIVIDUAL, THAT THE INDIV-
20 VIDUAL REPRESENTS OR INTENDS TO HAVE A NARCOTIC STIMULANT,
21 DEPRESSANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS
22 SYSTEM SUBSTANTIALLY SIMILAR TO THE NARCOTIC STIMULANT, DEPRES-
23 SANT, OR HALLUCINOGENIC EFFECT ON THE CENTRAL NERVOUS SYSTEM OF A
24 CONTROLLED SUBSTANCE INCLUDED IN SCHEDULE 1 OR 2. CONTROLLED
25 SUBSTANCE ANALOGUE DOES NOT INCLUDE ANY OF THE FOLLOWING:

26 (A) A CONTROLLED SUBSTANCE.

1 (B) A SUBSTANCE FOR WHICH THERE IS AN APPROVED NEW DRUG
2 APPLICATION.

3 (C) A SUBSTANCE WITH RESPECT TO WHICH AN EXEMPTION IS IN
4 EFFECT FOR INVESTIGATIONAL USE BY A PARTICULAR PERSON UNDER
5 SECTION 505 OF THE FEDERAL FOOD, DRUG AND COSMETIC ACT,
6 CHAPTER 675, 52 STAT. 1040, 21 U.S.C. 355, TO THE EXTENT CONDUCT
7 WITH RESPECT TO THE SUBSTANCE IS PURSUANT TO THE EXEMPTION.

8 (D) ANY SUBSTANCE TO THE EXTENT NOT INTENDED FOR HUMAN CON-
9 SUMPTION BEFORE AN EXEMPTION TAKES EFFECT WITH RESPECT TO THE
10 SUBSTANCE.

11 (3) ~~(4)~~ "Counterfeit prescription form" means a printed
12 form ~~which~~ THAT is the same or similar to a prescription form
13 or an official prescription form, and ~~which~~ THAT was manufac-
14 tured, printed, duplicated, forged, or altered without the knowl-
15 edge or permission of a licensed prescribing practitioner, or, in
16 the case of official prescription forms, the department of
17 ~~licensing and regulation~~ COMMERCE.

18 ~~(5) "Counterfeit substance" means a controlled substance~~
19 ~~which, or the container or labeling of which, without authoriza-~~
20 ~~tion, bears the trademark, trade name or other identifying mark,~~
21 ~~imprint, number, or device, or any likeness thereof, of a manu-~~
22 ~~facturer, distributor, or dispenser other than the person who in~~
23 ~~fact manufactured, distributed, or dispensed the substance.~~

24 (4) ~~(6)~~ "Deleterious drug" means a drug, other than a pro-
25 prietary medicine, likely to be destructive to adult human life
26 in quantities of 60 grains or less.

1 Sec. 7402. (1) Except as authorized by this article, a
2 person shall not create, deliver, ~~or~~ possess with intent to
3 deliver, POSSESS, OR USE a counterfeit substance or a controlled
4 substance analogue intended for human consumption. This section
5 shall not apply to a person who manufactures or distributes a
6 substance in conformance with the provisions of an approved new
7 drug application or an exemption for investigational use within
8 the meaning of section 505 of the federal food, drug, and cos-
9 metic act, 21 U.S.C. 355. For purposes of this section,
10 section 505 of the federal food, drug, and cosmetic act shall be
11 applicable to the introduction or delivery for introduction of
12 any new drug into intrastate, interstate, or foreign commerce.

13 (2) A person who violates this section ~~as to~~ BY CREATING,
14 DELIVERING, OR POSSESSING WITH INTENT TO DELIVER:

15 (a) A counterfeit substance classified in schedule 1 or 2
16 which is either a narcotic drug or described in section
17 7214(a)(iv), is guilty of a felony, punishable by imprisonment
18 for not more than 10 years, or a fine of not more than
19 \$10,000.00, or both.

20 (b) Any other counterfeit substance classified in schedule
21 1, 2, or 3, is guilty of a felony, punishable by imprisonment for
22 not more than 5 years, or a fine of not more than \$5,000.00, or
23 both.

24 (c) A counterfeit substance classified in schedule 4, is
25 guilty of a felony, punishable by imprisonment for not more than
26 4 years, or a fine of not more than \$2,000.00, or both.

1 (d) A counterfeit substance classified in schedule 5, is
2 guilty of a felony, punishable by imprisonment for not more than
3 2 years, or a fine of not more than \$2,000.00, or both.

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

7 (3) A PERSON WHO VIOLATES THIS SECTION BY POSSESSING OR
8 USING A CONTROLLED SUBSTANCE ANALOGUE OR A COUNTERFEIT SUBSTANCE
9 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT
10 MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.