

# HOUSE BILL No. 5923

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

A bill to amend sections 7401 and 7403 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 143 of the Public Acts of 1989, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7401 and 7403 of Act No. 368 of the  
2 Public Acts of 1978, as amended by Act No. 143 of the Public Acts  
3 of 1989, being sections 333.7401 and 333.7403 of the Michigan  
4 Compiled Laws, are amended to read as follows:

5 Sec. 7401. (1) Except as authorized by this article, a  
6 person shall not manufacture, deliver, or possess with intent to  
7 manufacture or deliver, a controlled substance, a prescription  
8 form, an official prescription form, or a counterfeit  
9 prescription form. A practitioner licensed by the administrator

1 under this article shall not dispense, prescribe, or administer a  
2 controlled substance for other than legitimate and professionally  
3 recognized therapeutic or scientific purposes or outside the  
4 scope of practice of the practitioner, licensee, or applicant.

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

6 (a) A controlled substance classified in schedule 1 or 2  
7 which is either a narcotic drug or described in section 7214(a)  
8 (iv) and:

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

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

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

20 (iv) Which is in an amount less than 50 grams, of any mix-  
21 ture containing that substance is guilty of a felony and shall be  
22 imprisoned for not less than 1 year nor more than 20 years, and  
23 may be fined not more than \$25,000.00, or placed on probation for  
24 life.

25 (b) Any other controlled substance classified in schedule 1,  
26 2, or 3, except marihuana, is guilty of a felony, punishable by

1 imprisonment for not more than 7 years, or a fine of not more  
2 than \$5,000.00, or both.

3 (c) A substance classified in schedule 4, ~~or marihuana,~~ is  
4 guilty of a felony, punishable by imprisonment for not more than  
5 4 years, or a fine of not more than \$2,000.00, or both.

6 (D) MARIHUANA OR A MIXTURE CONTAINING MARIHUANA, IS GUILTY  
7 OF A FELONY, PUNISHABLE AS FOLLOWS:

8 (i) IF THE AMOUNT IS 45 KILOGRAMS OR MORE, OR 100 PLANTS OR  
9 MORE, BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS, OR A FINE OF  
10 NOT MORE THAN \$5,000,000.00, OR BOTH.

11 (ii) IF THE AMOUNT IS 4.5 KILOGRAMS OR MORE BUT LESS THAN 45  
12 KILOGRAMS, OR 50 PLANTS OR MORE BUT LESS THAN 100 PLANTS, BY  
13 IMPRISONMENT FOR NOT MORE THAN 10 YEARS, OR A FINE OF NOT MORE  
14 THAN \$250,000.00, OR BOTH.

15 (iii) IF THE AMOUNT IS LESS THAN 4.5 KILOGRAMS OR 50 PLANTS,  
16 THE PERSON SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$500.00  
17 OR MORE THAN \$20,000.00, AND IN ADDITION MAY BE PUNISHED BY  
18 IMPRISONMENT FOR NOT MORE THAN 5 YEARS.

19 (E) ~~(d)~~ A substance classified in schedule 5, is guilty of  
20 a felony, punishable by imprisonment for not more than 2 years,  
21 or a fine of not more than \$2,000.00, or both.

22 (F) ~~(e)~~ An official prescription form or a counterfeit  
23 official prescription form, is guilty of a felony, punishable by  
24 imprisonment for not more than 20 years, or a fine of not more  
25 than \$25,000.00, or both.

26 (G) ~~(f)~~ A prescription form or a counterfeit prescription  
27 form other than an official prescription form or a counterfeit

1 official prescription form, is guilty of a felony, punishable by  
2 imprisonment for not more than 7 years, or a fine of not more  
3 than \$5,000.00, or both.

4 (3) A term of imprisonment imposed pursuant to subsection  
5 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be  
6 imposed to run consecutively with any term of imprisonment  
7 imposed for the commission of another felony. An individual  
8 subject to a mandatory term of imprisonment under subsection  
9 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not  
10 be eligible for probation, suspension of that sentence, or parole  
11 during that mandatory term, except and only to the extent that  
12 those provisions permit probation for life, and shall not receive  
13 a reduction in that mandatory term of imprisonment by disci-  
14 plinary credits or any other type of sentence credit reduction.

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

19 (5) POSSESSION OF 56 GRAMS OR MORE OF MARIHUANA IS PRIMA  
20 FACIE EVIDENCE OF POSSESSION OF MARIHUANA WITH INTENT TO DELIVER  
21 IN VIOLATION OF SUBSECTION (2)(D).

22 Sec. 7403. (1) A person shall not knowingly or intention-  
23 ally possess a controlled substance or an official prescription  
24 form or a prescription form unless the controlled substance,  
25 official prescription form, or prescription form was obtained  
26 directly from, or pursuant to, a valid prescription or order of a  
27 practitioner while acting in the course of the practitioner's

1 professional practice, or except as otherwise authorized by this  
2 article.

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

4 (a) A controlled substance classified in schedule 1 or 2  
5 which is either a narcotic drug or described in section  
6 7214(a)(iv), and:

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

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

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

18 (iv) Which is in an amount of 25 grams or more, but less  
19 than 50 grams of any mixture containing that controlled substance  
20 is guilty of a felony, and shall be imprisoned for not less than  
21 1 year and not more than 4 years, and may be fined not more than  
22 \$25,000.00 or placed on probation for life.

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

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

7 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
8 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
9 sified in schedule 5, is guilty of a misdemeanor, ~~punishable~~  
10 AND SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$500.00 OR MORE  
11 THAN \$2,000.00, AND IN ADDITION MAY BE PUNISHED by imprisonment  
12 for not more than 1 year. ~~, or a fine of not more than~~  
13 ~~\$1,000.00, or both.~~

14 (d) Marihuana, is guilty of a misdemeanor, ~~punishable~~ AND  
15 SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$500.00 OR MORE THAN  
16 \$2,000.00, AND IN ADDITION MAY BE PUNISHED by imprisonment for  
17 not more than 1 year. ~~, or a fine of not more than \$1,000.00, or~~  
18 ~~both.~~

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

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

26 (3) The court may depart from the minimum term of  
27 imprisonment authorized under subsection (2)(ii), (iii), or (iv)

1 if the court finds on the record that there are substantial and  
2 compelling reasons to do so.