

SENATE BILL No. 309

May 9, 1991, Introduced by Senators DILLINGHAM, ARTHURHULTZ, WELBORN, DUNASKISS, EHLERS, GEAKE, MC MANUS, CARL and CONROY and referred to the Committee on Judiciary.

A bill to amend sections 7410 and 7413 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

section 7410 as amended by Act No. 12 of the Public Acts of 1988 and section 7413 as amended by Act No. 144 of the Public Acts of 1988, being sections 333.7410 and 333.7413 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7410 and 7413 of Act No. 368 of the
2 Public Acts of 1978, section 7410 as amended by Act No. 12 of the
3 Public Acts of 1988 and section 7413 as amended by Act No. 144 of
4 the Public Acts of 1988, being sections 333.7410 and 333.7413 of
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 7410. (1) Except as otherwise provided in
7 ~~subsections (2) and (3)~~ THIS SECTION, an individual 18 years of

1 age or over who violates section 7401(2)(a)(iv) by delivering or
 2 distributing a controlled substance listed in schedule 1 or 2
 3 which is either a narcotic drug or described in section
 4 7214(a)(iv) to an individual under 18 years of age ~~who is at~~
 5 ~~least 3 years the deliverer's or distributor's junior~~ may be
 6 punished by the fine authorized by section 7401(2)(a)(iv) or by a
 7 term of imprisonment of not less than 1 year ~~nor~~ OR more than
 8 twice that authorized by section 7401(2)(a)(iv), or both. An
 9 individual 18 years of age or over who violates section ~~7401-~~
 10 7401(2)(B), (C), OR (D) by delivering or distributing any other
 11 controlled substance listed in schedules 1 to 5 to an individual
 12 under 18 years of age ~~who is at least 3 years the distributor's~~
 13 ~~junior~~ may be punished by the fine authorized by section
 14 7401(2)(b), (c), or (d), or by a term of imprisonment not more
 15 than twice that authorized by section 7401(2)(b), (c), or (d), or
 16 both. IT IS NOT A DEFENSE TO A PROSECUTION PURSUANT TO THIS SUB-
 17 SECTION THAT THE INDIVIDUAL 18 YEARS OF AGE OR OLDER DID NOT KNOW
 18 THAT THE INDIVIDUAL TO WHOM HE OR SHE DELIVERED OR DISTRIBUTED
 19 THE CONTROLLED SUBSTANCE WAS UNDER 18 YEARS OF AGE.

20 (2) ~~An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), AN
 21 individual ~~18 years of age or over~~ who violates section
 22 7401(2)(a)(iv), (B), OR (C) OR 7402(2)(A), (B), (C), OR (E) by
 23 delivering OR POSSESSING WITH INTENT TO DELIVER a controlled sub-
 24 stance ~~described~~ OR COUNTERFEIT SUBSTANCE CLASSIFIED in sched-
 25 ule 1, ~~or~~ 2, ~~which is either a narcotic drug or described in~~
 26 ~~section 7214(a)(iv) to a minor who is a student on or within 500~~
 27 ~~feet of school property~~ 3, OR 4, OR A CONTROLLED SUBSTANCE

1 ANALOGUE WITHIN A DRUG FREE ZONE shall be punished ~~—, subject to~~
2 ~~subsection (5),~~ by a term of imprisonment of not less than 2
3 years ~~nor~~ OR more than 3 times that authorized by section
4 7401(2)(a)(iv), (B), OR (C) OR 7402(2)(A), (B), (C), OR (E) and,
5 in addition, may be punished by a fine of not more than 3 times
6 that authorized by section 7401(2)(a)(iv), (B), OR (C) OR
7 7402(2)(A), (B), (C), OR (E).

8 (3) ~~An individual 18 years of age or over who violates sec-~~
9 ~~tion 7401(2)(a)(iv) by possessing with intent to deliver to a~~
10 ~~minor who is a student on or within 500 feet of school property a~~
11 ~~controlled substance described in schedule 1 or 2 which is either~~
12 ~~a narcotic drug or described in section 7214(a)(iv) shall be pun-~~
13 ~~ished, subject to subsection (5), by a term of imprisonment of~~
14 ~~not less than 2 years nor more than twice that authorized by~~
15 ~~section 7401(2)(a)(iv) and, in addition, may be punished by a~~
16 ~~fine of not more than 3 times that authorized by section~~
17 ~~7401(2)(a)(iv).~~ IF THE ONLY CONTROLLED SUBSTANCE INVOLVED IN THE
18 VIOLATION OF SUBSECTION (2) IS LESS THAN 25 GRAMS OF MARIJUANA,
19 THE MINIMUM TERM OF IMPRISONMENT IMPOSED ON THE INDIVIDUAL SHALL
20 BE NOT LESS THAN 1 YEAR.

21 (4) An individual ~~18 years of age or over~~ who violates
22 section 7403(2)(a)(v), (b), (c), or (d) by possessing a con-
23 trolled substance ~~on school property~~ WITHIN A DRUG FREE ZONE
24 shall be punished by a term of imprisonment or a fine, or both,
25 of not more than twice that authorized by section
26 7403(2)(a)(v), (b), (c), or (d).

1 (5) AN INDIVIDUAL SUBJECT TO A MANDATORY MINIMUM TERM OF
2 IMPRISONMENT UNDER SUBSECTION (2) OR (3) IS NOT ELIGIBLE FOR
3 PROBATION, SUSPENSION OF THE SENTENCE, OR PAROLE DURING THAT MAN-
4 DATORY MINIMUM TERM AND SHALL NOT RECEIVE A REDUCTION IN THAT
5 MANDATORY TERM OF IMPRISONMENT BY DISCIPLINARY CREDITS OR ANY
6 OTHER TYPE OF SENTENCE CREDIT REDUCTION.

7 (6) IT IS NOT A DEFENSE TO A PROSECUTION PURSUANT TO
8 SUBSECTION (2), (3), OR (4) THAT THE DEFENDANT DID NOT KNOW THAT
9 THE PROHIBITED CONDUCT TOOK PLACE WITHIN A DRUG FREE ZONE.

10 (7) ~~-(5)-~~ The court may depart from the minimum term of
11 imprisonment authorized under subsection (2) or (3) if the court
12 finds on the record that there are substantial and compelling
13 reasons to do so.

14 (8) A CITY, TOWNSHIP, VILLAGE, COUNTY, OR LOCAL OR INTERME-
15 DIATE SCHOOL DISTRICT MAY PLACE DRUG FREE ZONE SIGNS ON PUBLIC
16 ROADS WITHIN THAT CITY, TOWNSHIP, VILLAGE, COUNTY, OR LOCAL OR
17 INTERMEDIATE SCHOOL DISTRICT TO NOTIFY INDIVIDUALS OF DRUG FREE
18 ZONES.

19 ~~-(6) As used in this section, "school property" means a~~
20 ~~building, playing field, or property used for school purposes to~~
21 ~~impart instruction to children in grades kindergarten through 12,~~
22 ~~when provided by a public, private, denominational, or parochial~~
23 ~~school, except those buildings used primarily for adult education~~
24 ~~or college extension courses.~~

25 ~~-(7) A person who distributes marihuana without remuneration~~
26 ~~and not to further commercial distribution and who does not~~
27 ~~violate subsection (1) is guilty of a misdemeanor, punishable by~~

~~1 imprisonment for not more than 1 year, or a fine of not more than~~
~~2 \$1,000.00, or both, unless the distribution is in accordance with~~
~~3 the federal law or the law of this state.~~

4 (9) AS USED IN THIS SECTION:

5 (A) "DRUG FREE ZONE" MEANS 1 OR MORE OF THE FOLLOWING:

6 (i) SCHOOL PROPERTY AND THE AREA EXTENDING 1,000 FEET FROM
7 SCHOOL PROPERTY.

8 (ii) A STATE PARK, A MUNICIPAL PARK, A MUNICIPAL RECREATION
9 AREA, OR OTHER RECREATION AREA DESIGNATED BY LOCAL ORDINANCE, AND
10 THE AREA EXTENDING 1,000 FEET FROM THAT STATE PARK, MUNICIPAL
11 PARK, MUNICIPAL RECREATION AREA, OR OTHER RECREATION AREA DESIG-
12 NATED BY LOCAL ORDINANCE.

13 (iii) A RECREATIONAL FACILITY AND THE AREA EXTENDING 100
14 FEET FROM A RECREATIONAL FACILITY.

15 (B) "DRUG FREE ZONE SIGN" MEANS A DURABLE PLACARD THAT MEETS
16 ALL OF THE FOLLOWING CRITERIA:

17 (i) IS NOT LESS THAN 2 FEET IN WIDTH AND 2 FEET IN HEIGHT.

18 (ii) IS POSTED NOT LESS THAN 5 FEET HIGH OR MORE THAN 10
19 FEET HIGH AS MEASURED FROM THE SURFACE OF THE GROUND TO THE
20 BOTTOM OF THE PLACARD.

21 (iii) CONTAINS AT LEAST THE PHRASE "DRUG FREE ZONE" IN LET-
22 TERS NOT LESS THAN 1 INCH HIGH ON A WHITE BACKGROUND.

23 (C) "PLAYGROUND" MEANS 1 OR MORE OF THE FOLLOWING:

24 (i) AN OUTDOOR FACILITY THAT IS USED OR INTENDED TO BE USED
25 FOR PUBLIC RECREATION THAT CONTAINS 3 OR MORE SEPARATE APPARATUS,
26 INCLUDING, BUT NOT LIMITED TO, SLIDING BOARDS, SWING SETS, AND

1 TEETERBOARDS, USED OR INTENDED TO BE USED FOR RECREATION BY
2 INDIVIDUALS UNDER 18 YEARS OF AGE.

3 (ii) A PARKING LOT THAT IS APPURTENANT TO A FACILITY
4 DESCRIBED IN SUBPARAGRAPH (i).

5 (D) "RECREATIONAL FACILITY" MEANS 1 OR MORE OF THE
6 FOLLOWING:

7 (i) A SWIMMING POOL USED OR INTENDED TO BE USED BY THE
8 PUBLIC, OR A PARKING LOT APPURTENANT TO A SWIMMING POOL USED OR
9 INTENDED TO BE USED BY THE PUBLIC.

10 (ii) A PLAYGROUND.

11 (iii) A VIDEO ARCADE.

12 (iv) A YOUTH CENTER.

13 (E) "SCHOOL PROPERTY" MEANS 1 OR MORE OF THE FOLLOWING:

14 (i) A BUILDING, PLAYING FIELD, OR PROPERTY USED FOR SCHOOL
15 PURPOSES TO IMPART INSTRUCTION TO CHILDREN IN GRADES KINDERGARTEN
16 THROUGH 12, WHEN PROVIDED BY A PUBLIC, PRIVATE, DENOMINATIONAL,
17 OR PAROCHIAL SCHOOL.

18 (ii) A COLLEGE, UNIVERSITY, OR VOCATIONAL SCHOOL.

19 (F) "VIDEO ARCADE" MEANS A FACILITY THAT CONTAINS 10 OR MORE
20 PINBALL OR VIDEO MACHINES IN ANY COMBINATION, IF THAT FACILITY IS
21 LEGALLY ACCESSIBLE FOR THE USE OF INDIVIDUALS UNDER 18 YEARS OF
22 AGE.

23 (G) "YOUTH CENTER" MEANS 1 OR MORE OF THE FOLLOWING:

24 (i) A RECREATIONAL FACILITY OR GYMNASIUM USED OR INTENDED TO
25 BE USED PRIMARILY BY INDIVIDUALS UNDER 18 YEARS OF AGE THAT REGU-
26 LARLY PROVIDES ATHLETIC, CIVIC, OR CULTURAL ACTIVITIES.

1 (ii) A PARKING LOT THAT IS APPURTENANT TO A FACILITY
2 DESCRIBED IN SUBPARAGRAPH (i).

3 Sec. 7413. (1) An individual who was convicted previously
4 for a violation of any of the following offenses and is thereaf-
5 ter convicted of a second or subsequent violation of any of the
6 following offenses shall be imprisoned for life and shall not be
7 eligible for probation, suspension of sentence, or parole during
8 that mandatory term:

9 (a) A violation of section 7401(2)(a)(ii) or (iii).

10 (b) A violation of section 7403(2)(a)(ii) or (iii).

11 (c) Conspiracy to commit an offense proscribed by section
12 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

13 (2) Except as otherwise provided in subsections (1) and (3),
14 an individual convicted of a second or subsequent offense under
15 this article may be imprisoned for a term not more than twice the
16 term otherwise authorized or fined an amount not more than twice
17 that otherwise authorized, or both.

18 (3) An individual convicted of a second or subsequent
19 offense under section 7410(2) ~~or (3)~~ shall be punished, subject
20 to subsection (4), by a term of imprisonment of not less than 5
21 years ~~nor~~ OR more than twice that authorized under
22 section 7410(2) ~~or (3)~~ and, in addition, may be punished by a
23 fine of not more than 3 times that authorized by section 7410(2);
24 ~~or (3)~~ and shall not be eligible for probation or suspension
25 of sentence during the term of imprisonment.

26 (4) The court may depart from the minimum term of
27 imprisonment authorized under subsection (3) if the court finds

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

3 (5) For purposes of subsection (2), an offense is considered
4 a second or subsequent offense, if, before conviction of the
5 offense, the offender has at any time been convicted under this
6 article or under any statute of the United States or of any state
7 relating to a narcotic drug, marihuana, depressant, stimulant, or
8 hallucinogenic drug.