

HOUSE BILL No. 4075

February 2, 1993, Introduced by Rep. Clack and referred to the Committee on Transportation.

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; and to add section 7408a.

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

1 333.7407 of the Michigan Compiled Laws, are amended and
2 section 7408a is added to read as follows:

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

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

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

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

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

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

1 (iv) Which is in an amount less than 50 grams, of any
2 mixture containing that substance is guilty of a felony and shall
3 be imprisoned for not less than 1 year nor more than 20 years,
4 and may be fined not more than \$25,000.00, or placed on probation
5 for life.

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

10 (c) A substance classified in schedule 4 or marihuana, is
11 guilty of a felony, punishable by imprisonment for not more than
12 4 years, or a fine of not more than \$2,000.00, or both.

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

16 (e) An official prescription form or a counterfeit official
17 prescription form, is guilty of a felony, punishable by imprison-
18 ment for not more than 20 years, or a fine of not more than
19 \$25,000.00, or both.

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

25 (3) A term of imprisonment imposed pursuant to subsection
26 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
27 imposed to run consecutively with any term of imprisonment

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

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

13 (5) AS PART OF THE SENTENCE FOR A VIOLATION OF THIS SECTION
14 BY AN INDIVIDUAL, THE COURT SHALL ORDER THE SECRETARY OF STATE TO
15 SUSPEND THE OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE
16 INDIVIDUAL PURSUANT TO SECTION 7408A.

17 (6) BEFORE ACCEPTING A PLEA OF GUILTY THAT WILL RESULT IN A
18 LICENSE SUSPENSION UNDER SECTION 7408A, THE COURT SHALL ADVISE
19 THE ACCUSED OF THE STATUTORY CONSEQUENCES POSSIBLE AS THE RESULT
20 OF A PLEA OF GUILTY IN RESPECT TO SUSPENSION OF AN OPERATOR'S OR
21 CHAUFFEUR'S LICENSE, THE PENALTY IMPOSED FOR VIOLATION OF THIS
22 SECTION, AND THE LIMITATION ON THE RIGHT OF APPEAL.

23 Sec. 7402. (1) Except as authorized by this article, a
24 person shall not create, deliver, or possess with intent to
25 deliver, a counterfeit substance or a controlled substance analo-
26 gue intended for human consumption. This section shall not apply
27 to a person who manufactures or distributes a substance in

1 conformance with the provisions of an approved new drug
2 application or an exemption for investigational use within the
3 meaning of section 505 of the federal food, drug, and cosmetic
4 act, 21 U.S.C. 355. For purposes of this section, section 505 of
5 the federal food, drug, and cosmetic act shall be applicable to
6 the introduction or delivery for introduction of any new drug
7 into intrastate, interstate, or foreign commerce.

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

9 (a) A counterfeit substance classified in schedule 1 or 2
10 which is either a narcotic drug or described in section
11 7214(a)(iv), is guilty of a felony, punishable by imprisonment
12 for not more than 10 years, or a fine of not more than
13 \$10,000.00, or both.

14 (b) Any other counterfeit substance classified in schedule
15 1, 2, or 3, is guilty of a felony, punishable by imprisonment for
16 not more than 5 years, or a fine of not more than \$5,000.00, or
17 both.

18 (c) A counterfeit substance classified in schedule 4, is
19 guilty of a felony, punishable by imprisonment for not more than
20 4 years, or a fine of not more than \$2,000.00, or both.

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

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

1 (3) AS PART OF THE SENTENCE FOR A VIOLATION OF THIS SECTION
2 BY AN INDIVIDUAL, THE COURT SHALL ORDER THE SECRETARY OF STATE TO
3 SUSPEND THE OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE
4 INDIVIDUAL PURSUANT TO SECTION 7408A.

5 (4) BEFORE ACCEPTING A PLEA OF GUILTY THAT WILL RESULT IN A
6 LICENSE SUSPENSION UNDER SECTION 7408A, THE COURT SHALL ADVISE
7 THE ACCUSED OF THE STATUTORY CONSEQUENCES POSSIBLE AS THE RESULT
8 OF A PLEA OF GUILTY IN RESPECT TO SUSPENSION OF AN OPERATOR'S OR
9 CHAUFFEUR'S LICENSE, THE PENALTY IMPOSED FOR VIOLATION OF THIS
10 SECTION, AND THE LIMITATION ON THE RIGHT OF APPEAL.

11 Sec. 7403. (1) A person shall not knowingly or intention-
12 ally possess a controlled substance or an official prescription
13 form or a prescription form unless the controlled substance,
14 official prescription form, or prescription form was obtained
15 directly from, or pursuant to, a valid prescription or order of a
16 practitioner while acting in the course of the practitioner's
17 professional practice, or except as otherwise authorized by this
18 article.

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

20 (a) A controlled substance classified in schedule 1 or 2
21 which is either a narcotic drug or described in section
22 7214(a)(iv), and:

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

26 (ii) Which is in an amount of 225 grams or more, but less
27 than 650 grams, of any mixture containing that controlled

1 substance is guilty of a felony and shall be imprisoned for not
2 less than 20 years nor more than 30 years.

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

7 (iv) Which is in an amount of 25 grams or more, but less
8 than 50 grams of any mixture containing that controlled substance
9 is guilty of a felony, and shall be imprisoned for not less than
10 1 year and not more than 4 years, and may be fined not more than
11 \$25,000.00 or placed on probation for life.

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

16 (b) A controlled substance classified in schedule 1, 2, 3,
17 or 4, except a controlled substance classified in schedule 1 for
18 which a penalty is prescribed in subdivision (a), (c), or (d), is
19 guilty of a felony, punishable by imprisonment for not more than
20 2 years, or a fine of not more than \$2,000.00, or both.

21 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
22 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
23 sified in schedule 5, is guilty of a misdemeanor, punishable by
24 imprisonment for not more than 1 year, or a fine of not more than
25 \$1,000.00, or both.

1 (d) Marihuana, is guilty of a misdemeanor, punishable by
2 imprisonment for not more than 1 year, or a fine of not more than
3 \$1,000.00, or both.

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

7 (f) A prescription form other than an official prescription
8 form, is guilty of a misdemeanor, punishable by imprisonment for
9 not more than 1 year, or a fine of not more than \$1,000.00, or
10 both.

11 (3) The court may depart from the minimum term of imprison-
12 ment authorized under subsection ~~(2)(ii)~~ (2)(A)(ii), (iii), or
13 (iv) if the court finds on the record that there are substantial
14 and compelling reasons to do so.

15 (4) AS PART OF THE SENTENCE FOR A VIOLATION OF THIS SECTION
16 BY AN INDIVIDUAL, THE COURT SHALL ORDER THE SECRETARY OF STATE TO
17 SUSPEND THE OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE
18 INDIVIDUAL PURSUANT TO SECTION 7408A.

19 (5) BEFORE ACCEPTING A PLEA OF GUILTY THAT WILL RESULT IN A
20 LICENSE SUSPENSION UNDER SECTION 7408A, THE COURT SHALL ADVISE
21 THE ACCUSED OF THE STATUTORY CONSEQUENCES POSSIBLE AS THE RESULT
22 OF A PLEA OF GUILTY IN RESPECT TO SUSPENSION OF AN OPERATOR'S OR
23 CHAUFFEUR'S LICENSE, THE PENALTY IMPOSED FOR VIOLATION OF THIS
24 SECTION, AND THE LIMITATION ON THE RIGHT OF APPEAL.

25 Sec. 7404. (1) A person shall not use a controlled sub-
26 stance unless the substance was obtained directly from, or
27 pursuant to, a valid prescription or order of a practitioner

1 while acting in the course of the practitioner's professional
2 practice, or except as otherwise authorized by this 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), is guilty of a misdemeanor punishable by imprison-
7 ment for not more than 1 year, or a fine of not more than
8 \$2,000.00, or both.

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

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

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

22 (3) AS PART OF THE SENTENCE FOR A VIOLATION OF THIS SECTION
23 BY AN INDIVIDUAL, THE COURT SHALL ORDER THE SECRETARY OF STATE TO
24 SUSPEND THE OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE
25 INDIVIDUAL PURSUANT TO SECTION 7408A.

26 (4) BEFORE ACCEPTING A PLEA OF GUILTY THAT WILL RESULT IN A
27 LICENSE SUSPENSION UNDER SECTION 7408A, THE COURT SHALL ADVISE

1 THE ACCUSED OF THE STATUTORY CONSEQUENCES POSSIBLE AS THE RESULT
2 OF A PLEA OF GUILTY IN RESPECT TO SUSPENSION OF AN OPERATOR'S OR
3 CHAUFFEUR'S LICENSE, THE PENALTY IMPOSED FOR VIOLATION OF THIS
4 SECTION, AND THE LIMITATION ON THE RIGHT OF APPEAL.

5 Sec. 7407. (1) A person shall not knowingly or
6 intentionally:

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

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

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

15 (d) Furnish false or fraudulent material information in, or
16 omit any material information from, an application, report, offi-
17 cial prescription form, or other document required to be kept or
18 filed under this article, or any record required to be kept by
19 this article.

20 (e) Make, distribute, or possess a punch, die, plate, stone,
21 or other thing designed to print, imprint, or reproduce the
22 trademark, trade name, or other identifying mark, imprint, or
23 device of another or any likeness of any of the foregoing upon a
24 drug or container or labeling thereof so as to render the drug a
25 counterfeit substance.

26 (f) Knowingly and intentionally give, permit, or obtain
27 access to information submitted to the department of licensing

1 and regulation under section 7334, except as otherwise authorized
2 by this article.

3 (g) Possess counterfeit prescription forms, except as an
4 agent of government while engaged in the enforcement of this
5 part.

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

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

12 (4) AS PART OF THE SENTENCE FOR A VIOLATION OF THIS SECTION
13 BY AN INDIVIDUAL, THE COURT SHALL ORDER THE SECRETARY OF STATE TO
14 SUSPEND THE OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE
15 INDIVIDUAL PURSUANT TO SECTION 7408A.

16 (5) BEFORE ACCEPTING A PLEA OF GUILTY THAT WILL RESULT IN A
17 LICENSE SUSPENSION UNDER SECTION 7408A, THE COURT SHALL ADVISE
18 THE ACCUSED OF THE STATUTORY CONSEQUENCES POSSIBLE AS THE RESULT
19 OF A PLEA OF GUILTY IN RESPECT TO SUSPENSION OF AN OPERATOR'S OR
20 CHAUFFEUR'S LICENSE, THE PENALTY IMPOSED FOR VIOLATION OF THIS
21 SECTION, AND THE LIMITATION ON THE RIGHT OF APPEAL.

22 SEC. 7408A. (1) AS PART OF THE SENTENCE FOR A VIOLATION OF
23 SECTION 7401, 7402, 7403, 7404, OR 7407 BY AN INDIVIDUAL, THE
24 COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND THE
25 OPERATOR'S LICENSE OR CHAUFFEUR'S LICENSE OF THE INDIVIDUAL FOR A
26 PERIOD OF NOT LESS THAN 60 DAYS OR MORE THAN 1 YEAR, IF THE
27 INDIVIDUAL POSSESSED A CONTROLLED SUBSTANCE, A CONTROLLED

1 SUBSTANCE ANALOGUE, OR A COUNTERFEIT SUBSTANCE IN A MOTOR VEHICLE
2 UPON A PUBLIC HIGHWAY OR OTHER PLACE OPEN TO THE GENERAL PUBLIC
3 AT THE TIME OF THE VIOLATION.

4 (2) IF AN INDIVIDUAL'S OPERATOR'S LICENSE OR CHAUFFEUR'S
5 LICENSE IS SUSPENDED PURSUANT TO THIS SECTION, THE COURT MAY
6 ORDER THE SECRETARY OF STATE TO ISSUE TO THE INDIVIDUAL A
7 RESTRICTED LICENSE PERMITTING THE INDIVIDUAL TO DRIVE DURING ALL
8 OR A SPECIFIED PORTION OF THE PERIOD OF THE SUSPENSION PURSUANT
9 TO SECTION 319E OF THE MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE
10 PUBLIC ACTS OF 1949, BEING SECTION 257.319E OF THE MICHIGAN
11 COMPILED LAWS.

12 (3) THE MOTOR VEHICLE OPERATOR'S LICENSE OR CHAUFFEUR'S
13 LICENSE OF AN INDIVIDUAL WHOSE LICENSE IS SUSPENDED PURSUANT TO
14 THIS SECTION SHALL BE SURRENDERED TO THE COURT. THE COURT SHALL
15 IMMEDIATELY FORWARD THE SURRENDERED LICENSE AND AN ABSTRACT OF
16 CONVICTION TO THE SECRETARY OF STATE. THE ABSTRACT OF CONVICTION
17 SHALL INDICATE THE SENTENCE IMPOSED. UPON RECEIPT OF, AND PURSU-
18 ANT TO THE ABSTRACT OF CONVICTION, THE SECRETARY OF STATE SHALL
19 SUSPEND THE PERSON'S LICENSE AND, IF ORDERED BY THE COURT AND THE
20 PERSON IS OTHERWISE ELIGIBLE FOR A LICENSE, ISSUE TO THE PERSON A
21 RESTRICTED LICENSE STATING THE LIMITED DRIVING PRIVILEGES INDI-
22 CATED ON THE ABSTRACT. IF THE LICENSE IS NOT FORWARDED TO THE
23 SECRETARY OF STATE, AN EXPLANATION OF THE REASON WHY THE LICENSE
24 IS ABSENT SHALL BE ATTACHED. IF THE CONVICTION IS APPEALED, THE
25 APPELLATE COURT, EX PARTE, MAY ORDER THE SECRETARY OF STATE TO
26 RESCIND THE SUSPENSION, REVOCATION, OR RESTRICTED LICENSE ISSUED
27 PURSUANT TO THIS SECTION.

1 Section 2. This amendatory act shall not take effect unless
2 Senate Bill No. ____ or House Bill No. 4074(request
3 no. 02308'93) of the 87th Legislature is enacted into law.