



# HOUSE BILL No. 4229

February 11, 1993, Introduced by Reps. Whyman, Hoffman, Goschka, Gnodtke, Jamian, Lowe, London, Hill, Weeks, Horton, Rocca, Galloway, Bullard, Bodem, Gernaat, Kukuk, McManus, Porreca, Hammerstrom, Walberg, McBryde, Nye, Jersevic, Bender, Dalman, Middaugh, Voorhees, Sikkema, Shugars, Stille, Munsell, Fitzgerald and Dobb and referred to the Committee on Judiciary.

A bill to amend sections 7304, 7401, and 7403 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, being sections 333.7304, 333.7401, and 333.7403 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7304, 7401, and 7403 of Act No. 368 of  
2 the Public Acts of 1978, sections 7401 and 7403 as amended by Act  
3 No. 143 of the Public Acts of 1989, being sections 333.7304,  
4 333.7401, and 333.7403 of the Michigan Compiled Laws, are amended  
5 to read as follows:

6 Sec. 7304. (1) The requirement of licensure is waived for  
7 the following persons in the circumstances described in this  
8 section:

1 (a) An officer or employee of the drug enforcement  
2 administration while engaged in the course of official duties.

3 (b) An officer of the United States customs service while  
4 engaged in the course of official duties.

5 (c) An officer or employee of the United States food and  
6 drug administration while engaged in the course of official  
7 duties.

8 (d) A federal officer who is lawfully engaged in the  
9 enforcement of a federal law relating to controlled substances,  
10 drugs, or customs and who is authorized to possess controlled  
11 substances in the course of that person's official duties.

12 (e) An officer or employee of this state, or a political  
13 subdivision or agency of this state who is engaged in the  
14 enforcement of a state or local law relating to controlled sub-  
15 stances and who is authorized to possess controlled substances in  
16 the course of that person's official duties.

17 (2) An official exempted from licensure by this section,  
18 when acting in the course of that person's official duties, may  
19 possess a controlled substance and may transfer a controlled sub-  
20 stance to any other official who is exempted and who is acting in  
21 the course of that person's official duties.

22 (3) An official exempted by this section may procure a con-  
23 trolled substance in the course of an administrative inspection  
24 or investigation or in the course of a criminal investigation  
25 involving the person from whom the substance was procured.

26 (4) A LAW ENFORCEMENT OFFICER EXEMPTED BY THIS SECTION MAY  
27 DISTRIBUTE A CONTROLLED SUBSTANCE IN THE COURSE OF THAT OFFICER'S

1 OFFICIAL DUTIES CONCERNING A CRIMINAL INVESTIGATION INVOLVING THE  
2 PERSON TO WHOM THE CONTROLLED SUBSTANCE WAS DISTRIBUTED.

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~~ THAT is either a narcotic drug or described in section  
15 7214(a) (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) MARIHUANA OR A MIXTURE CONTAINING MARIHUANA, IS GUILTY  
14 OF A FELONY, PUNISHABLE AS FOLLOWS:

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

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

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

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

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

8 (G) ~~(f)~~ A prescription form or a counterfeit prescription  
9 form other than an official prescription form or a counterfeit  
10 official prescription form, is guilty of a felony, punishable by  
11 imprisonment for not more than 7 years, or a fine of not more  
12 than \$5,000.00, or both.

13 (3) A term of imprisonment imposed pursuant to subsection  
14 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be  
15 imposed to run consecutively with any term of imprisonment  
16 imposed for the commission of another felony. An individual  
17 subject to a mandatory term of imprisonment under subsection  
18 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not  
19 be eligible for probation, suspension of that sentence, or parole  
20 during that mandatory term, except and only to the extent that  
21 those provisions permit probation for life, and shall not receive  
22 a reduction in that mandatory term of imprisonment by disci-  
23 plinary credits or any other type of sentence credit reduction.

24 (4) The court may depart from the minimum term of imprison-  
25 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if  
26 the court finds on the record that there are substantial and  
27 compelling reasons to do so.

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

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

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

13 (a) A controlled substance classified in schedule 1 or 2  
14 ~~which~~ THAT is either a narcotic drug or described in section  
15 7214(a)(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 of 25 grams or more, but less  
2 than 50 grams of any mixture containing that controlled substance  
3 is guilty of a felony, and shall be imprisoned for not less than  
4 1 year and not more than 4 years, and may be fined not more than  
5 \$25,000.00 or placed on probation for life.

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

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

16 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
17 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
18 sified in schedule 5, is guilty of a misdemeanor, ~~punishable~~  
19 AND SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$500.00 OR MORE  
20 THAN \$2,000.00, AND MAY BE PUNISHED by imprisonment for not more  
21 than 1 year. ~~, or a fine of not more than \$1,000.00, or both.~~

22 (d) Marihuana, is guilty of a misdemeanor, ~~punishable~~ AND  
23 SHALL BE PUNISHED BY A FINE OF NOT LESS THAN \$500.00 OR MORE THAN  
24 \$2,000.00, AND MAY BE PUNISHED by imprisonment for not more than  
25 1 year. ~~, or a fine of not more than \$1,000.00, or both.~~

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

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

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