



# SENATE BILL No. 323

February 3, 1993, Introduced by Senator WELBORN and referred to the Committee on Family Law, Criminal Law, and Corrections.

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~~ OR 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~~ OR 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~~ OR more than 20 years,  
23 and may be fined not more than \$25,000.00, or placed on probation  
24 for 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) A substance classified in schedule 5, is guilty of a  
7 felony, punishable by imprisonment for not more than 2 years, or  
8 a fine of not more than \$2,000.00, or both.

9 (e) An official prescription form or a counterfeit official  
10 prescription form, is guilty of a felony, punishable by imprison-  
11 ment for not more than 20 years, or a fine of not more than  
12 \$25,000.00, or both.

13 (f) A prescription form or a counterfeit prescription form  
14 other than an official prescription form or a counterfeit offi-  
15 cial prescription form, is guilty of a felony, punishable by  
16 imprisonment for not more than 7 years, or a fine of not more  
17 than \$5,000.00, or both.

18 (3) A term of imprisonment imposed pursuant to subsection  
19 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be  
20 imposed to run consecutively with any term of imprisonment  
21 imposed for the commission of another felony. ~~AN~~ EXCEPT AS  
22 OTHERWISE PROVIDED IN THIS SUBSECTION, AN individual subject to a  
23 mandatory term of imprisonment under subsection (2)(a) or  
24 section 7403(2)(a)(i), (ii), (iii), or (iv) ~~shall not be~~ IS NOT  
25 eligible for probation, suspension of that sentence, or parole  
26 during that mandatory term, ~~except and only to the extent that~~  
27 UNLESS those provisions permit probation for life, and shall not

1 receive a reduction in that mandatory term of imprisonment by  
2 disciplinary credits or any other type of sentence credit  
3 reduction. AN INDIVIDUAL SENTENCED TO A TERM OF IMPRISONMENT FOR  
4 LIFE PURSUANT TO SUBSECTION (2)(A)(i) IS ELIGIBLE FOR PAROLE  
5 AFTER SERVING 30 CALENDAR YEARS OF THE SENTENCE, AS PROVIDED IN  
6 SECTION 34(5) OF ACT NO. 232 OF THE PUBLIC ACTS OF 1953, BEING  
7 SECTION 791.234 OF THE MICHIGAN COMPILED LAWS.

8 (4) The court may depart from the minimum term of imprison-  
9 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if  
10 the court finds ~~on the record~~ that there are substantial and  
11 compelling reasons to do so. IF THE COURT DEPARTS FROM THE TERM  
12 OF IMPRISONMENT AUTHORIZED UNDER SUBSECTION (2)(A)(ii), (iii), OR  
13 (iv), THE COURT SHALL DO BOTH OF THE FOLLOWING:

14 (A) STATE ALL OF ITS REASONS FOR THE DEPARTURE ON THE  
15 RECORD.

16 (B) IMPOSE A MINIMUM SENTENCE OF NOT LESS THAN 2/3 OF THE  
17 MINIMUM TERM OF IMPRISONMENT AUTHORIZED UNDER  
18 SUBSECTION (2)(A)(ii), (iii), OR (iv) FOR THAT VIOLATION.

19 Sec. 7403. (1) A person shall not knowingly or intention-  
20 ally possess a controlled substance or an official prescription  
21 form or a prescription form unless the controlled substance,  
22 official prescription form, or prescription form was obtained  
23 directly from, or pursuant to, a valid prescription or order of a  
24 practitioner while acting in the course of the practitioner's  
25 professional practice, or except as otherwise authorized by this  
26 article.

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

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

(i) Which is in an amount of 650 grams or more of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for ~~life~~ NOT LESS THAN 30 YEARS OR MORE THAN 50 YEARS.

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

(iii) Which is in an amount of 50 grams or more, but less than 225 grams, of any mixture containing that controlled substance is guilty of a felony and shall be imprisoned for not less than 10 years ~~nor~~ OR more than 20 years.

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

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

(b) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance ~~classified in schedule 1~~

1 for which a penalty is prescribed in subdivision (a), (c), or  
2 (d), is guilty of a felony, punishable by imprisonment for not  
3 more than 2 years, or a fine of not more than \$2,000.00, or  
4 both.

5 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
6 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
7 sified in schedule 5, is guilty of a misdemeanor, punishable by  
8 imprisonment for not more than 1 year, or a fine of not more than  
9 \$1,000.00, or both.

10 (d) Marihuana, is guilty of a misdemeanor, punishable by  
11 imprisonment for not more than 1 year, or a fine of not more than  
12 \$1,000.00, or both.

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

16 (f) A prescription form other than an official prescription  
17 form, is guilty of a misdemeanor, punishable by imprisonment for  
18 not more than 1 year, or a fine of not more than \$1,000.00, or  
19 both.

20 (3) The court may depart from the minimum term of imprison-  
21 ment authorized under subsection ~~-(2)(ii)-~~ (2)(A)(i), (ii),  
22 (iii), or (iv) if the court finds ~~on the record~~ that there are  
23 substantial and compelling reasons to do so. IF THE COURT  
24 DEPARTS FROM THE TERM OF IMPRISONMENT AUTHORIZED UNDER  
25 SUBSECTION (2)(A)(i), (ii), (iii), OR (iv), THE COURT SHALL DO  
26 BOTH OF THE FOLLOWING:

1       (A) STATE ALL OF ITS REASONS FOR THE DEPARTURE ON THE  
2 RECORD.

3       (B) IMPOSE A MINIMUM SENTENCE OF NOT LESS THAN 1/2 OF THE  
4 MINIMUM TERM OF IMPRISONMENT AUTHORIZED UNDER  
5 SUBSECTION (2)(A)(i), (ii), (iii), OR (iv) FOR THAT VIOLATION.

6       Section 2. This amendatory act shall not take effect unless  
7 Senate Bill No. 324

8                   of the 87th Legislature is enacted into law.