

HOUSE BILL No. 5830

February 28, 2008, Introduced by Reps. Meadows, Johnson, Condino, Alma Smith, Warren, Constan, Cushingberry, Clack, Hammel, Miller, Robert Jones, Leland, Young, Tobocman, Virgil Smith, Farrah, Bennett, Gonzales, Sheltroun, Jackson, Accavitti, Gillard, Scott, Bieda, Garfield, Rick Jones, Nofs, Wenke and Cheeks and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7401 and 7403 (MCL 333.7401 and 333.7403), as
amended by 2002 PA 710; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 practitioner, licensee, or applicant.

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

3 (a) A controlled substance classified in schedule 1 or 2 that
4 is a narcotic drug or a drug described in section 7214(a) (iv) and:

5 (i) Which is in an amount of 1,000 grams or more of any mixture
6 containing that substance is guilty of a felony punishable by
7 imprisonment for life or any term of years or a fine of not more
8 than \$1,000,000.00, or both.

9 (ii) Which is in an amount of 450 grams or more, but less than
10 1,000 grams, of any mixture containing that substance is guilty of
11 a felony and punishable by imprisonment for not more than 30 years
12 or a fine of not more than \$500,000.00, or both.

13 (iii) Which is in an amount of 50 grams or more, but less than
14 450 grams, of any mixture containing that substance is guilty of a
15 felony punishable by imprisonment for not more than 20 years or a
16 fine of not more than \$250,000.00, or both.

17 (iv) Which is in an amount less than 50 grams, of any mixture
18 containing that substance is guilty of a felony punishable by
19 imprisonment for not more than 20 years or a fine of not more than
20 \$25,000.00, or both.

21 (b) Either of the following:

22 (i) A substance described in section 7212(1) (g) or 7214(c) (ii)
23 is guilty of a felony punishable by imprisonment for not more than
24 20 years or a fine of not more than \$25,000.00, or both.

25 (ii) Any other controlled substance classified in schedule 1,
26 2, or 3, except marihuana is guilty of a felony punishable by
27 imprisonment for not more than 7 years or a fine of not more than

1 \$10,000.00, or both.

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

5 (d) Marihuana or a mixture containing marihuana is guilty of a
6 felony punishable as follows:

7 (i) If the amount is 45 kilograms or more, or 200 plants or
8 more, by imprisonment for not more than 15 years or a fine of not
9 more than \$10,000,000.00, or both.

10 (ii) If the amount is 5 kilograms or more but less than 45
11 kilograms, or 20 plants or more but fewer than 200 plants, by
12 imprisonment for not more than 7 years or a fine of not more than
13 \$500,000.00, or both.

14 (iii) If the amount is less than 5 kilograms or fewer than 20
15 plants, by imprisonment for not more than 4 years or a fine of not
16 more than \$20,000.00, or both.

17 (e) A substance classified in schedule 5 is guilty of a felony
18 punishable by imprisonment for not more than 2 years or a fine of
19 not more than \$2,000.00, or both.

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

23 (3) A term of imprisonment imposed under subsection (2)(a) may
24 be imposed to run consecutively with any term of imprisonment
25 imposed for the commission of another felony.

26 (4) If an individual was sentenced to lifetime probation under
27 subsection (2)(a)(iv) **AS IT EXISTED** before ~~the effective date of the~~

~~amendatory act that added this subsection~~ **MARCH 1, 2003** and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

(5) As used in this section, "plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

Sec. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, or prescription form was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this article.

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

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

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more

1 than \$1,000,000.00, or both.

2 (ii) Which is in an amount of 450 grams or more, but less than
3 1,000 grams, of any mixture containing that substance is guilty of
4 a felony punishable by imprisonment for not more than 30 years or a
5 fine of not more than \$500,000.00, or both.

6 (iii) Which is in an amount of 50 grams or more, but less than
7 450 grams, of any mixture containing that substance is guilty of a
8 felony punishable by imprisonment for not more than 20 years or a
9 fine of not more than \$250,000.00, or both.

10 (iv) Which is in an amount of 25 grams or more, but less than
11 50 grams of any mixture containing that substance is guilty of a
12 felony punishable by imprisonment for not more than 4 years or a
13 fine of not more than \$25,000.00, or both.

14 (v) Which is in an amount less than 25 grams of any mixture
15 containing that substance is guilty of a felony punishable by
16 imprisonment for not more than 4 years or a fine of not more than
17 \$25,000.00, or both.

18 (b) Either of the following:

19 (i) A substance described in section 7212(1)(g) or 7214(c)(ii)
20 is guilty of a felony punishable by imprisonment for not more than
21 10 years or a fine of not more than \$15,000.00, or both.

22 (ii) A controlled substance classified in schedule 1, 2, 3, or
23 4, except a controlled substance for which a penalty is prescribed
24 in subdivision (a), (b)(i), (c), or (d), or a controlled substance
25 analogue is guilty of a felony punishable by imprisonment for not
26 more than 2 years or a fine of not more than \$2,000.00, or both.

27 (c) Lysergic acid diethylamide, peyote, mescaline,

1 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
2 classified in schedule 5 is guilty of a misdemeanor punishable by
3 imprisonment for not more than 1 year or a fine of not more than
4 \$2,000.00, or both.

5 (d) Marihuana is guilty of a misdemeanor punishable by
6 imprisonment for not more than 1 year or a fine of not more than
7 \$2,000.00, or both.

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

11 (3) If an individual was sentenced to lifetime probation under
12 subsection (2) (a) (iv) **AS IT EXISTED** before ~~the effective date of the~~
13 ~~amendatory act that added this subsection~~ **MARCH 1, 2003** and the
14 individual has served 5 or more years of that probationary period,
15 the probation officer for that individual may recommend to the
16 court that the court discharge the individual from probation. If an
17 individual's probation officer does not recommend discharge as
18 provided in this subsection, with notice to the prosecutor, the
19 individual may petition the court seeking resentencing under the
20 court rules. The court may discharge an individual from probation
21 as provided in this subsection. An individual may file more than 1
22 motion seeking resentencing under this subsection.

23 Enacting section 1. Section 7413 of the public health code,
24 1978 PA 368, MCL 333.7413, is repealed.

25 Enacting section 2. This amendatory act does not take effect
26 unless all of the following bills of the 94th Legislature are
27 enacted into law:

1 (a) Senate Bill No. _____ or House Bill No. 5829 (request no.
2 01480'07 *).

3 (b) Senate Bill No. _____ or House Bill No. 5831 (request no.
4 01480'07 b *).