

SUBSTITUTE FOR
HOUSE BILL NO. 5338

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 2251 and 7341 (MCL 333.2251 and 333.7341),
section 7341 as added by 1984 PA 347.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2251. (1) Upon a determination that an imminent danger to
2 the health or lives of individuals exists in this state, the
3 director immediately shall inform the individuals affected by the
4 imminent danger and issue an order ~~which~~**THAT** shall be delivered to
5 a person ~~—~~authorized to avoid, correct, or remove the imminent
6 danger or be posted at or near the imminent danger. The order shall
7 incorporate the director's findings and require immediate action
8 necessary to avoid, correct, or remove the imminent danger. The
9 order may specify action to be taken or prohibit the presence of

1 individuals in locations or under conditions where the imminent
2 danger exists, except individuals whose presence is necessary to
3 avoid, correct, or remove the imminent danger.

4 (2) Upon failure of a person to comply promptly with a
5 department order issued under this section, the department may
6 petition the circuit court having jurisdiction to restrain a
7 condition or practice which the director determines causes the
8 imminent danger or to require action to avoid, correct, or remove
9 the imminent danger.

10 (3) If the director determines that conditions anywhere in
11 this state constitute a menace to the public health, the director
12 may take full charge of the administration of **APPLICABLE** state and
13 local health laws, rules, regulations, and ordinances ~~applicable~~
14 ~~thereto.~~ **IN ADDRESSING THAT MENACE.**

15 (4) **IF THE DIRECTOR DETERMINES THAT AN IMMINENT DANGER TO THE**
16 **HEALTH OR LIVES OF INDIVIDUALS IN THIS STATE CAN BE PREVENTED OR**
17 **CONTROLLED BY THE PROMULGATION OF AN EMERGENCY RULE UNDER SECTION**
18 **48(2) OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306,**
19 **MCL 24.248, TO SCHEDULE OR RESCHEDULE A SUBSTANCE AS A CONTROLLED**
20 **SUBSTANCE AS PROVIDED IN PART 72, THE DIRECTOR SHALL NOTIFY THE**
21 **DIRECTOR OF THE DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS AND**
22 **THE ADMINISTRATOR OF HIS OR HER DETERMINATION IN WRITING. THE**
23 **NOTIFICATION SHALL INCLUDE A DESCRIPTION OF THE SUBSTANCE TO BE**
24 **SCHEDULED OR RESCHEDULED AND THE GROUNDS FOR HIS OR HER**
25 **DETERMINATION. THE DIRECTOR MAY PROVIDE COPIES OF POLICE, HOSPITAL,**
26 **AND LABORATORY REPORTS AND OTHER INFORMATION TO THE DIRECTOR OF THE**
27 **DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS AND THE**

1 ADMINISTRATOR AS CONSIDERED APPROPRIATE BY THE DIRECTOR.

2 (5) ~~(4)~~—As used in this section:

3 (A) "ADMINISTRATOR" MEANS THAT TERM AS DEFINED IN SECTION
4 7103.

5 (B) ~~(a)~~—"Imminent danger" means a condition or practice exists
6 ~~which~~—**THAT** could reasonably be expected to cause death, disease, or
7 serious physical harm immediately or before the imminence of the
8 danger can be eliminated through enforcement procedures otherwise
9 provided.

10 (C) ~~(b)~~—"Person" means a person as defined in section 1106 or
11 a governmental entity.

12 Sec. 7341. (1) As used in this section:

13 (a) "Distribute" means the actual, constructive, or attempted
14 transfer, sale, delivery, or dispensing from one person to another
15 of an imitation controlled substance.

16 (b) "Imitation controlled substance" means a substance that is
17 not a controlled substance or is not a drug for which a
18 prescription is required under federal or state law, which by
19 dosage unit appearance including color, shape, size, or markings,
20 and/or by representations made, would lead a reasonable person to
21 believe that the substance is a controlled substance. However, this
22 subsection does not apply to a drug that is not a controlled
23 substance if it was marketed before the controlled substance that
24 it physically resembles. **AN IMITATION CONTROLLED SUBSTANCE DOES NOT**
25 **INCLUDE A PLACEBO OR REGISTERED INVESTIGATIONAL DRUG THAT WAS**
26 **MANUFACTURED, DISTRIBUTED, POSSESSED, OR DELIVERED IN THE ORDINARY**
27 **COURSE OF PROFESSIONAL PRACTICE OR RESEARCH. ALL OF THE FOLLOWING**

1 FACTORS SHALL BE CONSIDERED IN DETERMINING WHETHER A SUBSTANCE IS
2 AN IMITATION CONTROLLED SUBSTANCE:

3 (i) WHETHER THE SUBSTANCE WAS APPROVED BY THE FEDERAL FOOD AND
4 DRUG ADMINISTRATION FOR OVER-THE-COUNTER SALES AND WAS SOLD IN THE
5 FEDERAL FOOD AND DRUG ADMINISTRATION APPROVED PACKAGING ALONG WITH
6 THE FEDERAL FOOD AND DRUG ADMINISTRATION APPROVED LABELING
7 INFORMATION.

8 (ii) ANY STATEMENTS MADE BY AN OWNER OR ANOTHER PERSON IN
9 CONTROL OF THE SUBSTANCE CONCERNING THE NATURE, USE, OR EFFECT OF
10 THE SUBSTANCE.

11 (iii) WHETHER THE SUBSTANCE IS PACKAGED IN A MANNER NORMALLY
12 USED FOR ILLICIT CONTROLLED SUBSTANCES.

13 (iv) WHETHER THE OWNER OR ANOTHER PERSON IN CONTROL OF THE
14 SUBSTANCE HAS ANY PRIOR CONVICTIONS UNDER STATE OR FEDERAL LAW
15 RELATED TO CONTROLLED SUBSTANCES OR FRAUD.

16 (v) THE PROXIMITY OF THE SUBSTANCE TO CONTROLLED SUBSTANCES.

17 (vi) WHETHER THE CONSIDERATION TENDERED IN EXCHANGE FOR THE
18 SUBSTANCE SUBSTANTIALLY EXCEEDS THE REASONABLE VALUE OF THE
19 SUBSTANCE CONSIDERING THE ACTUAL CHEMICAL COMPOSITION OF THE
20 SUBSTANCE AND, IF APPLICABLE, THE PRICE AT WHICH THE OVER-THE-
21 COUNTER SUBSTANCES OF LIKE CHEMICAL COMPOSITION SELL.

22 (c) "Manufacture" means the production, preparation,
23 compounding, conversion, encapsulating, packaging, repackaging,
24 labeling, relabeling, or processing of an imitation controlled
25 substance, directly or indirectly.

26 (2) In addition to all logically relevant factors, the
27 following factors as related to "representations made" shall be

1 considered in determining whether a substance is an imitation
2 controlled substance:

3 (a) Any express or implied representation made that the nature
4 of the substance or its use or effect is similar to that of a
5 controlled substance.

6 (b) Any express or implied representation made that the
7 substance may be resold for an amount considerably in excess of the
8 reasonable value of the composite ingredients and the cost of
9 processing.

10 (c) Any express or implied representation made that the
11 substance is a controlled substance.

12 (d) Any express or implied representation that the substance
13 is of a nature or appearance that the recipient of the substance
14 will be able to distribute the substance as a controlled substance.

15 (e) That the substance's package, label, or name is
16 substantially similar to that of a controlled substance.

17 (f) The proximity of the substance to a controlled substance.

18 (g) That the physical appearance of the substance is
19 substantially identical to a specific controlled substance,
20 including any numbers or codes thereon, and the shape, size,
21 markings, or color.

22 (3) Except as provided in subsection (7), a person shall not
23 manufacture, distribute, or possess with intent to distribute, an
24 imitation controlled substance.

25 (4) A person shall not use, or possess with intent to use, an
26 imitation controlled substance, except under the direction of a
27 person authorized pursuant to subsection (7). A person who violates

1 this subsection is subject to a civil fine of not more than \$100.00
2 and costs. Upon a second or subsequent violation of this
3 subsection, a person is guilty of a misdemeanor punishable by
4 imprisonment for not more than 90 days, or a fine of not more than
5 \$100.00, or both.

6 (5) A default in the payment of a civil fine or costs ordered
7 under subsection (4) or an installment thereof may be collected by
8 any means authorized for the enforcement of a judgment under
9 chapter 40 **OR CHAPTER 60** of the revised judicature act of 1961, ~~Act~~
10 ~~No. 236 of the Public Acts of 1961, being sections 600.4001 to~~
11 ~~600.4065 of the Michigan Compiled Laws, or under chapter 60 of Act~~
12 ~~No. 236 of the Public Acts of 1961, being sections 600.6001 to~~
13 ~~600.6097 of the Michigan Compiled Laws.~~ **1961 PA 236, MCL 600.4001 TO**
14 **600.4065 AND 600.6001 TO 600.6098.**

15 (6) A person shall not place an advertisement or solicitation
16 in this state to be distributed by any electronic media in this
17 state, or place an advertisement or solicitation in this state in
18 any newspaper, magazine, handbill, or other publication; or post or
19 distribute an advertisement or solicitation in any public place in
20 this state, knowing or having reason to know that the purpose of
21 the advertisement or solicitation is to promote the distribution of
22 an imitation controlled substance. A person who violates this
23 subsection is guilty of a misdemeanor, punishable by imprisonment
24 for not more than 1 year, or a fine of not more than \$5,000.00, or
25 both.

26 (7) This section does not apply to any person who is
27 authorized by the administrator or the federal food and drug

1 administration to manufacture, distribute, prescribe, or possess an
2 imitation controlled substance for use as a placebo for legitimate
3 medical, therapeutic, or research purposes.

4 (8) Except as provided in subsections (4) and (6), a person
5 who violates this section is guilty of a felony, punishable by
6 imprisonment for not more than 2 years, or by a fine of not more
7 than \$10,000.00, or both.

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 96th Legislature are
10 enacted into law:

11 (a) Senate Bill No. 789.

12 (b) House Bill No. 5714.