

HOUSE BILL No. 5649

May 12, 2016, Introduced by Reps. Pscholka, Singh, Schor, Forlini, Hughes, Lyons, Afendoulis, Glenn, Sheppard, Tedder, Crawford, Aaron Miller, Pagel, Inman, Muxlow, Irwin, Webber, Leutheuser, Wittenberg, Yonker, Kivela, Garcia, Iden, Heise, Maturen, Vaupel, Jenkins, Kelly, LaVoy, Durhal, Hoadley, Plawecki, LaGrand, Garrett, Moss, Lucido, Poleski, Yanez, Greig, Cochran, Gay-Dagnogo, Banks, Byrd, Geiss, Hovey-Wright, Zemke, Driskell, Townsend, Faris and Lane and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7403 (MCL 333.7403), as amended by 2015 PA 220.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

15 (iv) Which is in an amount of 25 grams or more, but less than
16 50 grams of any mixture containing that substance is guilty of a
17 felony punishable by imprisonment for not more than 4 years or a
18 fine of not more than \$25,000.00, or both.

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

23 (b) Either of the following:

24 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)
25 is guilty of a felony punishable by imprisonment for not more than
26 10 years or a fine of not more than \$15,000.00, or both.

27 (ii) A controlled substance classified in schedule 1, 2, 3, or

1 4, except a controlled substance for which a penalty is prescribed
2 in subparagraph (i) or subdivision (a), (c), or (d), or a
3 controlled substance analogue is guilty of a felony punishable by
4 imprisonment for not more than 2 years or a fine of not more than
5 \$2,000.00, or both.

6 (c) Lysergic acid diethylamide, peyote, mescaline,
7 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
8 classified in schedule 5 is guilty of a misdemeanor punishable by
9 imprisonment for not more than 1 year or a fine of not more than
10 \$2,000.00, or both.

11 (d) Marihuana is guilty of a misdemeanor punishable by
12 imprisonment for not more than 1 year or a fine of not more than
13 \$2,000.00, or both.

14 (e) A prescription form is guilty of a misdemeanor punishable
15 by imprisonment for not more than 1 year or a fine of not more than
16 \$1,000.00, or both.

17 (3) The following individuals are not in violation of this
18 section:

19 (a) An individual who ~~is less than 21 years of age and who~~
20 seeks medical assistance for himself or herself or who requires
21 medical assistance and is presented for assistance by another
22 individual if he or she is incapacitated because of a drug overdose
23 or other perceived medical emergency arising from the use of a
24 ~~prescription drug that is a controlled substance or a prescription~~
25 ~~drug that is a controlled substance analogue that he or she~~
26 possesses or possessed in an amount sufficient only for personal
27 use and the evidence of his or her violation of this section is

1 obtained as a result of the individual's seeking or being presented
2 for medical assistance.

3 (b) An individual who ~~is less than 21 years of age and who in~~
4 good faith attempts to procure medical assistance for another
5 individual or who accompanies another individual who requires
6 medical assistance for a drug overdose or other perceived medical
7 emergency arising from the use of a ~~prescription drug that is a~~
8 controlled substance or a ~~prescription drug that is a~~ controlled
9 substance analogue that he or she possesses or possessed in an
10 amount sufficient only for personal use and the evidence of his or
11 her violation of this section is obtained as a result of the
12 individual's attempting to procure medical assistance for another
13 individual or as a result of the individual's accompanying another
14 individual who requires medical assistance to a health facility or
15 agency.

16 (4) A health facility or agency shall develop a process for
17 notification of the parent or parents, guardian, or custodian of a
18 minor under the age of 18 who is not emancipated under 1968 PA 293,
19 MCL 722.1 to 722.6, and who voluntarily presents himself or
20 herself, or is presented by another individual if he or she is
21 incapacitated, to a health facility or agency for emergency medical
22 treatment as provided in subsection (3). A health facility or
23 agency shall not provide notification to a parent or parents,
24 guardian, or custodian under this subsection for nonemergency
25 treatment without obtaining the minor's consent.

26 (5) The exemption from prosecution under this section provided
27 in subsection (3) shall not prevent the investigation, arrest,

1 charging, or prosecution of an individual for any other violation
2 of the laws of this state or be grounds for suppression of evidence
3 in the prosecution of any other criminal charges.

4 (6) If an individual was sentenced to lifetime probation under
5 subsection (2)(a)(iv) as it existed before March 1, 2003 and the
6 individual has served 5 or more years of that probationary period,
7 the probation officer for that individual may recommend to the
8 court that the court discharge the individual from probation. If an
9 individual's probation officer does not recommend discharge as
10 provided in this subsection, with notice to the prosecutor, the
11 individual may petition the court seeking resentencing under the
12 court rules. The court may discharge an individual from probation
13 as provided in this subsection. An individual may file more than 1
14 motion seeking resentencing under this subsection.

15 (7) As used in this section:

16 (a) "Drug overdose" means a condition including, but not
17 limited to, extreme physical illness, decreased level of
18 consciousness, respiratory depression, coma, mania, or death, that
19 is the result of consumption or use of a controlled substance or a
20 controlled substance analogue or a substance with which the
21 controlled substance or controlled substance analogue was combined,
22 or that a layperson would reasonably believe to be a drug overdose
23 that requires medical assistance.

24 (b) "Seeks medical assistance" includes, but is not limited
25 to, reporting a drug overdose or other medical emergency to law
26 enforcement, the 9-1-1 system, a poison control center, or a
27 medical provider, or assisting someone in reporting a drug overdose

1 or other medical emergency.

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.

4 Enacting section 2. This amendatory act does not take effect
5 unless Senate Bill No. _____ or House Bill No. 5650 (request no.
6 05888'16) of the 98th Legislature is enacted into law.