

# HOUSE BILL NO. 5395

October 14, 2021, Introduced by Reps. Puri, Allor, Aiyash, Pohutsky, Camilleri and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7401, 7403, and 7404 (MCL 333.7401, 333.7403,  
and 333.7404), section 7401 as amended by 2016 PA 548, section 7403  
as amended by 2016 PA 307, and section 7404 as amended by 2016 PA  
308.

## **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

1 manufacture, create, or deliver a controlled substance, a  
2 prescription form, or a counterfeit prescription form. A  
3 practitioner licensed by the administrator under this article shall  
4 not dispense, prescribe, or administer a controlled substance for  
5 other than legitimate and professionally recognized therapeutic or  
6 scientific purposes or outside the scope of practice of the  
7 practitioner, licensee, or applicant.

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

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

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

15 (ii) Which is in an amount of 450 grams or more, but less than  
16 1,000 grams, of any mixture containing that substance is guilty of  
17 a felony and punishable by imprisonment for not more than 30 years  
18 or a fine of not more than \$500,000.00, or both.

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

23 (iv) Which is in an amount less than 50 grams, of any mixture  
24 containing that substance is guilty of a felony punishable by  
25 imprisonment for not more than 20 years or a fine of not more than  
26 \$25,000.00, or both.

27 (b) Either of the following:

28 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)  
29 is guilty of a felony punishable by imprisonment for not more than

1 20 years or a fine of not more than \$25,000.00, or both.

2 (ii) Any other controlled substance classified in schedule 1,  
3 2, or 3, except marihuana or a substance listed in section  
4 7212(1)(d), is guilty of a felony punishable by imprisonment for  
5 not more than 7 years or a fine of not more than \$10,000.00, or  
6 both.

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

10 (d) Marihuana, a mixture containing marihuana, or a substance  
11 listed in section 7212(1)(d) is guilty of a felony punishable as  
12 follows:

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

16 (ii) If the amount is 5 kilograms or more but less than 45  
17 kilograms, or 20 plants or more but fewer than 200 plants, by  
18 imprisonment for not more than 7 years or a fine of not more than  
19 \$500,000.00, or both.

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

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

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

29 (g) **Etizolam, a mixture containing etizolam, or a substance**

1 listed in section 7212(1)(y) is guilty of a felony punishable as  
2 follows:

3 (i) If the amount is 1,000 grams or more, by imprisonment for  
4 not more than 15 years or a fine of not more than \$1,000,000.00, or  
5 both.

6 (ii) If the amount is 450 grams or more but less than 1,000  
7 grams, by imprisonment for not more than 7 years or a fine of not  
8 more than \$500,000.00, or both.

9 (iii) If the amount is 50 grams or more but less than 450 grams,  
10 by imprisonment for not more than 4 years or a fine of not more  
11 than \$20,000.00, or both.

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

15 (4) If an individual was sentenced to lifetime probation under  
16 subsection (2)(a)(iv) as it existed before March 1, 2003 and the  
17 individual has served 5 or more years of that probationary period,  
18 the probation officer for that individual may recommend to the  
19 court that the court discharge the individual from probation. If an  
20 individual's probation officer does not recommend discharge as  
21 provided in this subsection, with notice to the prosecutor, the  
22 individual may petition the court seeking resentencing under the  
23 court rules. The court may discharge an individual from probation  
24 as provided in this subsection. An individual may file more than 1  
25 motion seeking resentencing under this subsection.

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

29 Sec. 7403. (1) A person shall not knowingly or intentionally

1 possess a controlled substance, a controlled substance analogue, or  
2 a prescription form unless the controlled substance, controlled  
3 substance analogue, or prescription form was obtained directly  
4 from, or pursuant to, a valid prescription or order of a  
5 practitioner while acting in the course of the practitioner's  
6 professional practice, or except as otherwise authorized by this  
7 article.

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

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

11 (i) That is in an amount of 1,000 grams or more of any mixture  
12 containing that substance is guilty of a felony punishable by  
13 imprisonment for life or any term of years or a fine of not more  
14 than \$1,000,000.00, or both.

15 (ii) That is in an amount of 450 grams or more, but less than  
16 1,000 grams, of any mixture containing that substance is guilty of  
17 a felony punishable by imprisonment for not more than 30 years or a  
18 fine of not more than \$500,000.00, or both.

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

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

27 (v) That is in an amount less than 25 grams of any mixture  
28 containing that substance is guilty of a felony punishable by  
29 imprisonment for not more than 4 years or a fine of not more than

1 \$25,000.00, or both.

2 (b) Either of the following:

3 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)  
4 is guilty of a felony punishable by imprisonment for not more than  
5 10 years or a fine of not more than \$15,000.00, or both.

6 (ii) A controlled substance classified in schedule 1, 2, 3, or  
7 4, except a controlled substance for which a penalty is prescribed  
8 in subparagraph (i) or subdivision (a), (c), or (d), or a controlled  
9 substance analogue is guilty of a felony punishable by imprisonment  
10 for not more than 2 years or a fine of not more than \$2,000.00, or  
11 both.

12 (c) Lysergic acid diethylamide, peyote, mescaline,  
13 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
14 classified in schedule 5 is guilty of a misdemeanor punishable by  
15 imprisonment for not more than 1 year or a fine of not more than  
16 \$2,000.00, or both.

17 (d) Marihuana or a substance listed in section 7212(1)(d) is  
18 guilty of a misdemeanor punishable by imprisonment for not more  
19 than 1 year or a fine of not more than \$2,000.00, or both.

20 **(e) Etizolam or a substance listed in section 7212(1)(y) is**  
21 **guilty of a misdemeanor punishable by imprisonment for not more**  
22 **than 1 year or a fine of not more than \$2,000.00, or both.**

23 **(f) ~~(e)~~**A prescription form is guilty of a misdemeanor  
24 punishable by imprisonment for not more than 1 year or a fine of  
25 not more than \$1,000.00, or both.

26 (3) The following individuals are not in violation of this  
27 section:

28 (a) An individual who seeks medical assistance for himself or  
29 herself or who requires medical assistance and is presented for

1 assistance by another individual if he or she is incapacitated  
2 because of a drug overdose or other perceived medical emergency  
3 arising from the use of a controlled substance or a controlled  
4 substance analogue that he or she possesses or possessed in an  
5 amount sufficient only for personal use and the evidence of his or  
6 her violation of this section is obtained as a result of the  
7 individual's seeking or being presented for medical assistance.

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

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

29 (5) The exemption from prosecution under this section provided

1 in subsection (3) does not prevent the investigation, arrest,  
2 charging, or prosecution of an individual for any other violation  
3 of the laws of this state or be grounds for suppression of evidence  
4 in the prosecution of any other criminal charges.

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

16 (7) As used in this section:

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

25 (b) "Seeks medical assistance" means reporting a drug overdose  
26 or other medical emergency to law enforcement, the 9-1-1 system, a  
27 poison control center, or a medical provider, or assisting someone  
28 in reporting a drug overdose or other medical emergency.

29 Sec. 7404. (1) A person shall not use a controlled substance



1 or controlled substance analogue unless the substance was obtained  
2 directly from, or pursuant to, a valid prescription or order of a  
3 practitioner while acting in the course of the practitioner's  
4 professional practice, or except as otherwise authorized by this  
5 article.

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

7 (a) A controlled substance classified in schedule 1 or 2 as a  
8 narcotic drug or a drug described in section 7212(1)(h) or  
9 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by  
10 imprisonment for not more than 1 year or a fine of not more than  
11 \$2,000.00, or both.

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

17 (c) Lysergic acid diethylamide, peyote, mescaline,  
18 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
19 classified in schedule 5 is guilty of a misdemeanor punishable by  
20 imprisonment for not more than 6 months or a fine of not more than  
21 \$500.00, or both.

22 (d) Marihuana, catha edulis, salvia divinorum, or a substance  
23 described in section 7212(1)(d) or (i) is guilty of a misdemeanor  
24 punishable by imprisonment for not more than 90 days or a fine of  
25 not more than \$100.00, or both.

26 **(e) Etizolam or a substance listed in section 7212(1)(y) is**  
27 **guilty of a misdemeanor punishable by imprisonment for not more**  
28 **than 90 days or a fine of not more than \$100.00, or both.**

29 (3) The following individuals are not in violation of this

1 section:

2 (a) An individual who seeks medical assistance for himself or  
3 herself or who requires medical assistance and is presented for  
4 assistance by another individual if he or she is incapacitated  
5 because of a drug overdose or other perceived medical emergency  
6 arising from the use of a controlled substance or a controlled  
7 substance analogue that he or she possesses or possessed in an  
8 amount sufficient only for personal use and the evidence of his or  
9 her violation of this section is obtained as a result of the  
10 individual's seeking or being presented for medical assistance.

11 (b) An individual who in good faith attempts to procure  
12 medical assistance for another individual or who accompanies  
13 another individual who requires medical assistance for a drug  
14 overdose or other perceived medical emergency arising from the use  
15 of a controlled substance or a controlled substance analogue that  
16 he or she possesses or possessed in an amount sufficient only for  
17 personal use and the evidence of his or her violation of this  
18 section is obtained as a result of the individual's attempting to  
19 procure medical assistance for another individual or as a result of  
20 the individual's accompanying another individual who requires  
21 medical assistance to a health facility or agency.

22 (4) A health facility or agency shall develop a process for  
23 notification of the parent or parents, guardian, or custodian of a  
24 minor under the age of 18 who is not emancipated under 1968 PA 293,  
25 MCL 722.1 to 722.6, and who voluntarily presents himself or  
26 herself, or is presented by another individual if he or she is  
27 incapacitated, to a health facility or agency for emergency medical  
28 treatment as provided in subsection (3). A health facility or  
29 agency shall not provide notification to a parent or parents,

1 guardian, or custodian under this subsection for nonemergency  
2 treatment without obtaining the minor's consent.

3 (5) The exemption from prosecution under this section provided  
4 in subsection (3) does not prevent the investigation, arrest,  
5 charging, or prosecution of an individual for any other violation  
6 of the laws of this state, or be grounds for suppression of  
7 evidence in the prosecution of any other criminal charges.

8 (6) As used in this section:

9 (a) "Drug overdose" means a condition including, but not  
10 limited to, extreme physical illness, decreased level of  
11 consciousness, respiratory depression, coma, mania, or death, that  
12 is the result of consumption or use of a controlled substance or a  
13 controlled substance analogue or a substance with which the  
14 controlled substance or controlled substance analogue was combined,  
15 or that a layperson would reasonably believe to be a drug overdose  
16 that requires medical assistance.

17 (b) "Seeks medical assistance" means reporting a drug overdose  
18 or other medical emergency to law enforcement, the 9-1-1 system, a  
19 poison control center, or a medical provider, or assisting someone  
20 in reporting a drug overdose or other medical emergency.

21 Enacting section 1. This amendatory act does not take effect  
22 unless House Bill No. 4089 of the 101st Legislature is enacted into  
23 law.