

HOUSE BILL NO. 5128

October 12, 2023, Introduced by Reps. Skaggs, Wilson and Filler and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7401 (MCL 333.7401), as amended by 2016 PA 548.

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

1 other than legitimate and professionally recognized therapeutic or
2 scientific purposes or outside the scope of practice of the
3 practitioner, licensee, or applicant.

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

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

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

11 (ii) ~~Which~~ **That** is in an amount of 450 grams or more, but less
12 than 1,000 grams, of any mixture containing that substance is
13 guilty of a felony and punishable by imprisonment ~~for not more than~~
14 ~~30 years~~ or a fine, ~~of not more than \$500,000.00,~~ or both, **as**
15 **provided under subsection (6).**

16 (iii) ~~Which~~ **That** is in an amount of 50 grams or more, but less
17 than 450 grams, of any mixture containing that substance is guilty
18 of a felony punishable by imprisonment ~~for not more than 20 years~~
19 or a fine, ~~of not more than \$250,000.00,~~ or both, **as provided under**
20 **subsection (7).**

21 (iv) ~~Which~~ **That** is in an amount less than 50 grams, of any
22 mixture containing that substance is guilty of a felony punishable
23 by imprisonment ~~for not more than 20 years~~ or a fine, ~~of not more~~
24 ~~than \$25,000.00,~~ or both, **as provided under subsection (8).**

25 (b) Either of the following:

26 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)
27 is guilty of a felony punishable by imprisonment for not more than
28 20 years or a fine of not more than \$25,000.00, or both.

29 (ii) Any other controlled substance classified in schedule 1,

1 2, or 3, except marihuana, ~~or~~ a substance listed in section
2 7212(1)(d), **or a substance listed in subsections (5) to (8)**, is
3 guilty of a felony punishable by imprisonment for not more than 7
4 years or a fine of not more than \$10,000.00, or both.

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

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

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

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

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

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

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

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

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

12 **(5) A person who violates this section as described in**
13 **subsection (2) (a) (i) is subject to the following penalties:**

14 **(a) If the substance is heroin, fentanyl, carfentanil, or any**
15 **derivative of heroin, fentanyl, or carfentanil, by imprisonment for**
16 **life or any term of years or a fine of not more than \$1,000,000.00.**

17 **(b) If the substance is a substance that is not listed in**
18 **subdivision (a), by imprisonment for not more than 30 years or a**
19 **fine of not more than \$1,000,000.00, or both.**

20 **(6) A person who violates this section as described in**
21 **subsection (2) (a) (ii) is subject to the following penalties:**

22 **(a) If the substance is heroin, fentanyl, carfentanil, or any**
23 **derivative of heroin, fentanyl, or carfentanil, by imprisonment for**
24 **not more than 30 years or a fine of not more than \$500,000.00.**

25 **(b) If the substance is a substance that is not listed in**
26 **subdivision (a), by imprisonment for not more than 20 years or a**
27 **fine of not more than \$500,000.00, or both.**

28 **(7) A person who violates this section as described in**
29 **subsection (2) (a) (iii) is subject to the following penalties:**

1 (a) If the substance is heroin, fentanyl, carfentanil, or any
2 derivative of heroin, fentanyl, or carfentanil, by imprisonment for
3 not more than 20 years or a fine of not more than \$250,000.00, or
4 both.

5 (b) If the substance is a substance that is not listed in
6 subdivision (a), by imprisonment for not more than 20 years or a
7 fine of not more than \$250,000.00, or both.

8 (8) A person who violates this section as described in
9 subsection (2) (a) (iv) is subject to the following penalties:

10 (a) If the substance is heroin, fentanyl, carfentanil, or any
11 derivative of heroin, fentanyl, or carfentanil, by imprisonment for
12 not more than 20 years or a fine of not more than \$25,000.00, or
13 both.

14 (b) If the substance is a substance that is not listed under
15 subdivision (a), by imprisonment for not more than 10 years or a
16 fine of not more than \$25,000.00, or both.

17 (9) ~~(5)~~As used in this section, "plant" means a marihuana
18 plant that has produced cotyledons or a cutting of a marihuana
19 plant that has produced cotyledons.

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