

# HOUSE BILL No. 5089

September 26, 1989, Introduced by Rep. Bryant and referred to the Committee on Judiciary.

A bill to amend sections 7401 and 7403 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 143 of the Public Acts of 1989, being sections 333.7401 and 333.7403 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 7401 and 7403 of Act No. 368 of the  
2 Public Acts of 1978, as amended by Act No. 143 of the Public Acts  
3 of 1989, being sections 333.7401 and 333.7403 of the Michigan  
4 Compiled Laws, are amended to read as follows:

5       Sec. 7401. (1) Except as authorized by this article, a  
6 person shall not manufacture, deliver, or possess with intent to  
7 manufacture or deliver, a controlled substance, a prescription  
8 form, an official prescription form, or a counterfeit  
9 prescription form. A practitioner licensed by the administrator

1 under this article shall not dispense, prescribe, or administer a  
2 controlled substance for other than legitimate and professionally  
3 recognized therapeutic or scientific purposes or outside the  
4 scope of practice of the practitioner, licensee, or applicant.

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

6 (a) A controlled substance classified in schedule 1 or 2  
7 which is either a narcotic drug or described in section 7214(a)  
8 (iv) and:

9 (i) Which is in an amount of 650 grams or more of any mix-  
10 ture containing that controlled substance is guilty of a felony  
11 and shall be imprisoned for life.

12 (ii) Which is in an amount of 225 grams or more, but less  
13 than 650 grams, of any mixture containing that controlled sub-  
14 stance is guilty of a felony and shall be imprisoned for not less  
15 than 20 years ~~nor~~ OR more than 30 years.

16 (iii) Which is in an amount of 50 grams or more, but less  
17 than 225 grams, of any mixture containing that controlled sub-  
18 stance is guilty of a felony and shall be imprisoned for not less  
19 than 10 years ~~nor~~ OR more than 20 years.

20 (iv) Which is in an amount less than 50 grams, of any mix-  
21 ture containing that substance is guilty of a felony and shall be  
22 imprisoned for not less than 1 year ~~nor~~ OR more than 20 years,  
23 and may be fined not more than \$25,000.00, or placed on probation  
24 for life.

25 (b) Any other controlled substance classified in schedule 1,  
26 2, or 3, except marihuana, is guilty of a felony, punishable by

1 imprisonment for not more than 7 years, or a fine of not more  
2 than \$5,000.00, or both.

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

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

9 (e) An official prescription form or a counterfeit official  
10 prescription form, is guilty of a felony, punishable by imprison-  
11 ment for not more than 20 years, or a fine of not more than  
12 \$25,000.00, or both.

13 (f) A prescription form or a counterfeit prescription form  
14 other than an official prescription form or a counterfeit offi-  
15 cial prescription form, is guilty of a felony, punishable by  
16 imprisonment for not more than 7 years, or a fine of not more  
17 than \$5,000.00, or both.

18 (3) A term of imprisonment imposed pursuant to subsection  
19 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be  
20 imposed to run consecutively with any term of imprisonment  
21 imposed for the commission of another felony. An individual  
22 subject to a mandatory term of imprisonment under subsection  
23 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not  
24 be eligible for probation, suspension of that sentence, or parole  
25 during that mandatory term, except and only to the extent that  
26 those provisions permit probation for life, and shall not receive  
27 a reduction in that mandatory term of imprisonment by

1 disciplinary credits or any other type of sentence credit  
2 reduction.

3       (4) The court may depart from the TERM OF IMPRISONMENT FOR  
4 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) OR THE minimum term of  
5 imprisonment authorized under subsection (2)(a)(ii), (iii), or  
6 (iv) if the court finds on the record that there are substantial  
7 and compelling reasons to do so. IF THE COURT DEPARTS FROM THE  
8 TERM OF IMPRISONMENT FOR LIFE AUTHORIZED UNDER SUBSECTION  
9 (2)(A)(i), THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR  
10 NOT LESS THAN 30 YEARS BUT LESS THAN LIFE. AN INDIVIDUAL SEN-  
11 TENCED TO A MANDATORY MINIMUM TERM OF IMPRISONMENT UNDER THIS  
12 SUBSECTION SHALL NOT BE ELIGIBLE FOR PROBATION, SUSPENSION OF  
13 THAT SENTENCE, OR PAROLE DURING THAT MANDATORY TERM AND SHALL NOT  
14 RECEIVE A REDUCTION IN THAT MANDATORY TERM BY DISCIPLINARY CRED-  
15 ITS OR ANY OTHER TYPE OF SENTENCE CREDIT REDUCTION.

16       Sec. 7403. (1) A person shall not knowingly or intention-  
17 ally possess a controlled substance, ~~or~~ an official prescrip-  
18 tion form, or a prescription form unless the controlled sub-  
19 stance, official prescription form, or prescription form was  
20 obtained directly from, or pursuant to, a valid prescription or  
21 order of a practitioner while acting in the course of the  
22 practitioner's professional practice, or except as otherwise  
23 authorized by this article.

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

25       (a) A controlled substance classified in schedule 1 or 2  
26 which is either a narcotic drug or described in section  
27 7214(a)(iv), and:

1 (i) Which is in an amount of 650 grams or more of any  
2 mixture containing that controlled substance is guilty of a  
3 felony and shall be imprisoned for life.

4 (ii) Which is in an amount of 225 grams or more, but less  
5 than 650 grams, of any mixture containing that controlled sub-  
6 stance is guilty of a felony and shall be imprisoned for not less  
7 than 20 years ~~nor~~ OR more than 30 years.

8 (iii) Which is in an amount of 50 grams or more, but less  
9 than 225 grams, of any mixture containing that controlled sub-  
10 stance is guilty of a felony and shall be imprisoned for not less  
11 than 10 years ~~nor~~ OR more than 20 years.

12 (iv) Which is in an amount of 25 grams or more, but less  
13 than 50 grams of any mixture containing that controlled substance  
14 is guilty of a felony, and shall be imprisoned for not less than  
15 1 year ~~and not~~ OR more than 4 years, and may be fined not more  
16 than \$25,000.00 or placed on probation for life.

17 (v) Which is in an amount less than 25 grams of any mixture  
18 containing that controlled substance is guilty of a felony, pun-  
19 ishable by imprisonment for not more than 4 years or a fine of  
20 not more than \$25,000.00, or both.

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

26 (c) Lysergic acid diethylamide, peyote, mescaline,  
27 dimethyltryptamine, psilocyn, psilocybin, or a controlled

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

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

7 (e) An official prescription form, is guilty of a felony,  
8 punishable by imprisonment for not more than 1 year, or a fine of  
9 not more than \$2,000.00, or both.

10 (f) A prescription form other than an official prescription  
11 form, is guilty of a misdemeanor, punishable by imprisonment for  
12 not more than 1 year, or a fine of not more than \$1,000.00, or  
13 both.

14 (3) The court may depart from the TERM OF IMPRISONMENT FOR  
15 LIFE AUTHORIZED UNDER SUBSECTION (2)(A)(i) OR THE minimum term of  
16 imprisonment authorized under subsection ~~(2)(ii), (iii), or~~  
17 ~~(iv)~~ (2)(A)(ii), (iii), OR (iv) if the court finds on the record  
18 that there are substantial and compelling reasons to do so. IF  
19 THE COURT DEPARTS FROM THE TERM OF IMPRISONMENT FOR LIFE AUTHO-  
20 RIZED UNDER SUBSECTION (2)(A)(i), THE COURT SHALL IMPOSE A SEN-  
21 TENCE OF IMPRISONMENT FOR NOT LESS THAN 30 YEARS BUT LESS THAN  
22 LIFE. AN INDIVIDUAL SENTENCED TO A MANDATORY MINIMUM TERM OF  
23 IMPRISONMENT UNDER THIS SUBSECTION SHALL NOT BE ELIGIBLE FOR PRO-  
24 BATION, SUSPENSION OF THAT SENTENCE, OR PAROLE DURING THAT MANDA-  
25 TORY TERM AND SHALL NOT RECEIVE A REDUCTION IN THAT MANDATORY  
26 TERM BY DISCIPLINARY CREDITS OR ANY OTHER TYPE OF SENTENCE CREDIT  
27 REDUCTION.