

SENATE BILL No. 358

April 20, 1989, Introduced by Senators WELBORN, DINGELL, ARTHURHULTZ, O'BRIEN and N. SMITH and referred to the Committee on Criminal Justice and Urban Affairs.

A bill to amend sections 7401, 7402, 7413, and 7416 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

sections 7401 and 7402 as amended by Act No. 60 of the Public Acts of 1988, section 7413 as amended by Act No. 144 of the Public Acts of 1988, and section 7416 as added by Act No. 17 of the Public Acts of 1988, being sections 333.7401, 333.7402, 333.7413, and 333.7416 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 7401, 7402, 7413, and 7416 of Act
2 No. 368 of the Public Acts of 1978, sections 7401 and 7402 as
3 amended by Act No. 60 of the Public Acts of 1988, section 7413 as
4 amended by Act No. 144 of the Public Acts of 1988, and section
5 7416 as added by Act No. 17 of the Public Acts of 1988, being

1 sections 333.7401, 333.7402, 333.7413, and 333.7416 of the
2 Michigan Compiled Laws, are amended to read as follows:

3 Sec. 7401. (1) Except as authorized by this article, a
4 person shall not manufacture, deliver, or possess with intent to
5 manufacture or deliver, a controlled substance, a prescription
6 form, an official prescription form, or a counterfeit prescrip-
7 tion form. A practitioner licensed by the administrator under
8 this article shall not dispense, prescribe, or administer a con-
9 trolled substance for other than legitimate and professionally
10 recognized therapeutic or scientific purposes or outside the
11 scope of practice of the practitioner, licensee, or applicant.

12 (2) ~~—A~~ EXCEPT AS PROVIDED UNDER SUBSECTION (5), A person
13 who violates this section as to:

14 (a) A controlled substance classified in schedule 1 or 2
15 which is either a narcotic drug or described in section 7214(a)
16 (iv) and:

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

20 (ii) Which is in an amount of 225 grams or more, but less
21 than 650 grams, of any mixture containing that controlled sub-
22 stance is guilty of a felony and shall be imprisoned for not less
23 than 10 years nor more than 30 years.

24 (iii) Which is in an amount of 50 grams or more, but less
25 than 225 grams, of any mixture containing that controlled sub-
26 stance is guilty of a felony and shall be imprisoned for not less
27 than 5 years nor more than 20 years.

1 (iv) Which is in an amount less than 50 grams, of any
2 mixture containing that substance is guilty of a felony and shall
3 be imprisoned for not less than 1 year nor more than 20 years,
4 and may be fined not more than \$25,000.00, or placed on probation
5 for life.

6 (b) Any other controlled substance classified in schedule 1,
7 2, or 3, except marihuana, is guilty of a felony, punishable by
8 imprisonment for not more than 7 years, or a fine of not more
9 than \$5,000.00, or both.

10 (c) A substance classified in schedule 4 or marihuana, is
11 guilty of a felony, punishable by imprisonment for not more than
12 4 years, or a fine of not more than \$2,000.00, or both.

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

16 (e) An official prescription form or a counterfeit official
17 prescription form, is guilty of a felony, punishable by imprison-
18 ment for not more than 20 years, or a fine of not more than
19 \$25,000.00, or both.

20 (f) A prescription form or a counterfeit prescription form
21 other than an official prescription form or a counterfeit offi-
22 cial prescription form, is guilty of a felony, punishable by
23 imprisonment for not more than 7 years, or a fine of not more
24 than \$5,000.00, or both.

25 (3) A term of imprisonment imposed pursuant to subsection
26 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be
27 imposed to run consecutively with any term of imprisonment

1 imposed for the commission of another felony. An individual
2 subject to a mandatory term of imprisonment under subsection
3 (2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) shall not
4 be eligible for probation, suspension of that sentence, or parole
5 during that mandatory term, except and only to the extent that
6 those provisions permit probation for life, and shall not receive
7 a reduction in that mandatory term of imprisonment by disci-
8 plinary credits or any other type of sentence credit reduction.

9 (4) The court may depart from the minimum term of imprison-
10 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
11 the court finds on the record that there are substantial and com-
12 pelling reasons to do so.

13 (5) A PERSON WHO COMMITS AN ACT PROSCRIBED UNDER SUBSECTION
14 (1) OR (2) AND BY THAT ACT CAUSES SERIOUS INJURY TO ANOTHER
15 PERSON IS GUILTY OF A HEINOUS CRIME PUNISHABLE BY IMPRISONMENT
16 FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE, OR AS PROVIDED UNDER
17 THIS SECTION.

18 (6) AS USED IN THIS SECTION, "SERIOUS INJURY" MEANS BODILY
19 HARM THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PER-
20 MANENT DISFIGUREMENT, OR THAT SERIOUSLY AND PERMANENTLY IMPAIRS
21 THE HEALTH OR FUNCTION OF THE BODY, OR THAT CAUSES SUBSTANTIAL
22 IMPAIRMENT OF ANY BODILY PART.

23 Sec. 7402. (1) Except as authorized by this article, a
24 person shall not create, deliver, or possess with intent to
25 deliver, a counterfeit substance or a controlled substance analo-
26 gue intended for human consumption. This section shall not apply
27 to a person who manufactures or distributes a substance in

1 conformance with the provisions of an approved new drug
2 application or an exemption for investigational use within the
3 meaning of section 505 of the federal food, drug, and cosmetic
4 act, 21 U.S.C. 355. For purposes of this section, section 505 of
5 the federal food, drug, and cosmetic act shall be applicable to
6 the introduction or delivery for introduction of any new drug
7 into intrastate, interstate, or foreign commerce.

8 (2) ~~A~~ EXCEPT AS PROVIDED UNDER SUBSECTION (3), A person
9 who violates this section as to:

10 (a) A counterfeit substance classified in schedule 1 or 2
11 which is either a narcotic drug or described in section
12 7214(a)(iv), is guilty of a felony, punishable by imprisonment
13 for not more than 10 years, or a fine of not more than
14 \$10,000.00, or both.

15 (b) Any other counterfeit substance classified in schedule
16 1, 2, or 3, is guilty of a felony, punishable by imprisonment for
17 not more than 5 years, or a fine of not more than \$5,000.00, or
18 both.

19 (c) A counterfeit substance classified in schedule 4, is
20 guilty of a felony, punishable by imprisonment for not more than
21 4 years, or a fine of not more than \$2,000.00, or both.

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

25 (e) A controlled substance analogue, is guilty of a felony,
26 punishable by imprisonment for not more than 15 years, or a fine
27 of not more than \$250,000.00, or both.

1 (3) A PERSON WHO COMMITS AN ACT PROSCRIBED UNDER SUBSECTION
2 (1) OR (2) AND BY THAT ACT CAUSES SERIOUS INJURY TO ANOTHER
3 PERSON IS GUILTY OF A HEINOUS CRIME PUNISHABLE BY IMPRISONMENT
4 FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE, OR AS PROVIDED UNDER
5 SUBSECTIONS (1) AND (2).

6 (4) AS USED IN THIS SECTION, "SERIOUS INJURY" MEANS BODILY
7 HARM THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PER-
8 MANENT DISFIGUREMENT, OR THAT SERIOUSLY AND PERMANENTLY IMPAIRS
9 THE HEALTH OR FUNCTION OF THE BODY, OR THAT CAUSES SUBSTANTIAL
10 IMPAIRMENT OF ANY BODILY PART.

11 Sec. 7413. (1) An individual who was convicted previously
12 for a violation of any of the following offenses and is thereaf-
13 ter convicted of a second or subsequent violation of any of the
14 following offenses shall be imprisoned for life and shall not be
15 eligible for probation, suspension of sentence, or parole during
16 that mandatory term:

17 (a) A violation of section 7401(2)(a)(ii) or (iii).

18 (b) A violation of section 7403(2)(a)(ii) or (iii).

19 (c) Conspiracy to commit an offense proscribed by section
20 7401(2)(a)(ii) or (iii) or section 7403(2)(a)(ii) or (iii).

21 (2) Except as otherwise provided in subsections (1) and (3),
22 an individual convicted of a second or subsequent offense under
23 this article may be imprisoned for a term not more than twice the
24 term otherwise authorized or fined an amount not more than twice
25 that otherwise authorized, or both.

26 (3) An individual convicted of a second or subsequent
27 offense under section 7410(2) or (3) shall be punished, subject

1 to subsection (4), by a term of imprisonment of not less than 5
2 years nor more than twice that authorized under section 7410(2)
3 or (3) and, in addition, may be punished by a fine of not more
4 than 3 times that authorized by section 7410(2) or (3); and shall
5 not be eligible for probation or suspension of sentence during
6 the term of imprisonment.

7 (4) The court may depart from the minimum term of imprison-
8 ment authorized under subsection (3) if the court finds on the
9 record that there are substantial and compelling reasons to do
10 so.

11 (5) For purposes of subsection (2), an offense is considered
12 a second or subsequent offense, if, before conviction of the
13 offense, the offender has at any time been convicted under this
14 article or under any statute of the United States or of any state
15 relating to a narcotic drug, marihuana, depressant, stimulant, or
16 hallucinogenic drug.

17 (6) A PERSON WHO COMMITS AN ACT PROSCRIBED UNDER SUBSECTION
18 (1), (2), OR (3), AND BY THAT ACT CAUSES SERIOUS INJURY TO
19 ANOTHER PERSON IS GUILTY OF A HEINOUS CRIME, PUNISHABLE BY
20 IMPRISONMENT FOR LIFE WITHOUT ELIGIBILITY FOR PAROLE, OR AS PRO-
21 VIDED UNDER SUBSECTIONS (1), (2), AND (3).

22 (7) AS USED IN THIS SECTION, "SERIOUS INJURY" MEANS BODILY
23 HARM THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PER-
24 MANENT DISFIGUREMENT, OR THAT SERIOUSLY AND PERMANENTLY IMPAIRS
25 THE HEALTH OR FUNCTION OF THE BODY, OR THAT CAUSES SUBSTANTIAL
26 IMPAIRMENT OF ANY BODILY PART.

1 Sec. 7416. (1) Except as otherwise provided in ~~subsection~~
2 SUBSECTIONS (4) AND (5), a person 17 years of age or over who
3 recruits, induces, solicits, or coerces a minor less than 17
4 years of age to commit or attempt to commit any act ~~which~~ THAT
5 would be a felony under this part if committed by an adult is
6 guilty of a felony and may be punished by a fine of not more than
7 the fine authorized by this part for an adult who commits such an
8 act, and shall be punished, subject to subsection (3), as
9 follows:

10 (a) Except as provided in subdivision (b), by imprisonment
11 for not less than 1/2 of the maximum term of imprisonment autho-
12 rized by this part for an adult who commits such an act and not
13 more than the maximum term of imprisonment authorized by this
14 part for an adult who commits such an act.

15 (b) If the act to be committed or attempted by the minor is
16 a violation of section 7401(2)(a)(i), by imprisonment for life.

17 (2) A person subject to a sentence under subsection (1)
18 shall not be subject to a delayed sentence or a suspended sen-
19 tence and shall not be eligible for probation.

20 (3) The court may depart from the minimum terms of imprison-
21 ment authorized under subsection (1)(a) and (b) if the court
22 finds on the record that there are substantial and compelling
23 reasons to do so.

24 (4) Subsection (1)(a) does not apply to an act which is a
25 violation of section 7401(2)(c) and which involves the manufac-
26 ture, delivery, or possession with intent to deliver of
27 marihuana.

1 (5) A PERSON WHO COMMITS AN ACT PROSCRIBED UNDER SUBSECTION
2 (1) AND BY THAT ACT CAUSES SERIOUS INJURY TO ANOTHER PERSON IS
3 GUILTY OF A HEINOUS CRIME PUNISHABLE BY IMPRISONMENT FOR LIFE
4 WITHOUT ELIGIBILITY FOR PAROLE, OR AS PROVIDED UNDER SUBSECTION
5 (1).

6 (6) AS USED IN THIS SECTION, "SERIOUS INJURY" MEANS BODILY
7 HARM THAT CREATES A SUBSTANTIAL RISK OF DEATH OR SERIOUS PER-
8 MANENT DISFIGUREMENT, OR THAT SERIOUSLY AND PERMANENTLY IMPAIRS
9 THE HEALTH OR FUNCTION OF THE BODY, OR THAT CAUSES SUBSTANTIAL
10 IMPAIRMENT OF ANY BODILY PART.