

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4656

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 430 (MCL 750.430), as amended by 2002 PA
672.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 430. (1) ~~Any physician or other person who, while in~~
2 ~~a state of intoxication, prescribes a poison, drug, or medicine~~
3 ~~to another person. A licensed health care professional who does~~
4 **either of the following** is guilty of a misdemeanor: ~~punishable~~
5 ~~by imprisonment for not more than 1 year or a fine of not more~~
6 ~~than \$1,000.00.~~

7 (a) **Engages in the practice of his or her health profession**
8 **with a bodily alcohol content of .05 or more grams per 100**
9 **milliliters of blood, per 210 liters of breath, or per 67**
10 **milliliters of urine.**

1 (b) Engages in the practice of his or her health profession
2 while he or she is under the influence of a controlled substance
3 and, due to the illegal or improper use of the controlled
4 substance, his or her ability to safely and skillfully engage in
5 the practice of his or her health profession is visibly
6 impaired.

7 (2) A peace officer who has reasonable cause to believe an
8 individual violated subsection (1) may require the individual to
9 submit to a chemical analysis of his or her breath, blood, or
10 urine. Before an individual is required to submit to a chemical
11 analysis under this subsection, the peace officer shall inform
12 the individual of all of the following:

13 (a) The individual may refuse to submit to the chemical
14 analysis, but if he or she refuses, the officer may obtain a
15 court order requiring the individual to submit to a chemical
16 analysis.

17 (b) If the individual submits to the chemical analysis, he or
18 she may obtain a chemical analysis from a person of his or her
19 own choosing.

20 (3) The failure of a peace officer to comply with the
21 requirements of subsection (2) renders the results of a chemical
22 analysis inadmissible as evidence in a criminal prosecution for
23 violating this section, in a civil action arising out of a
24 violation of this section, or in any administrative proceeding
25 arising out of a violation of this section.

26 (4) The collection and testing of breath, blood, or urine
27 specimens under this section shall be conducted in the same

1 manner that breath, blood, or urine specimens are collected and
2 tested for alcohol-related and controlled substance-related
3 driving violations under the Michigan vehicle code, 1949 PA 300,
4 MCL 257.1 to 257.923.

5 (5) This section does not prohibit the individual from being
6 charged with, convicted of, or sentenced for any other violation
7 of law arising out of the same transaction as the violation of
8 this section in lieu of being charged with, convicted of, or
9 sentenced for the violation of this section.

10 (6) This section does not apply to a licensed health care
11 professional who in good faith renders emergency care without
12 compensation at the scene of an emergency unless the acts or
13 omissions by the licensed health care professional amount to
14 gross negligence or willful and wanton misconduct.

15 (7) If an individual is convicted under this section, the
16 court shall order that individual to participate in the health
17 professional recovery program established under section 16167 of
18 the public health code, 1978 PA 368, MCL 333.16167.

19 (8) A violation of this section is punishable as follows:

20 (a) If the individual's conduct did not result in physical
21 harm or injury to the patient and the individual has not been
22 convicted previously for violating this section, the court,
23 without entering a judgment of guilt and with the consent of the
24 accused and of the prosecuting attorney, may defer further
25 proceedings and place the accused on probation upon terms and
26 conditions that shall include, but are not limited to,
27 participation in the health professional recovery program

1 established under section 16167 of the public health code, 1978
2 PA 368, MCL 333.16167. Upon violation of a term or condition,
3 the court may enter an adjudication of guilt and proceed as
4 otherwise provided under subdivision (b). Upon fulfillment of
5 the terms and conditions, the court shall discharge the
6 individual and dismiss the proceedings. Discharge and dismissal
7 under this section shall be without adjudication of guilt and are
8 not a conviction for purposes of this section or for purposes of
9 disqualifications or disabilities imposed by law upon conviction
10 of a crime, including additional penalties imposed for second or
11 subsequent convictions under this subsection. There may only be
12 1 discharge and dismissal under this section as to an
13 individual. The records and identifications division of the
14 department of state police shall retain a nonpublic record of an
15 arrest and discharge or dismissal under this subsection. This
16 record shall only be furnished to a court or police agency upon
17 request for the purpose of showing whether the individual accused
18 of violating this section has already once utilized this
19 subdivision.

20 (b) For a first offense, by imprisonment for not more than
21 180 days or a fine of not more than \$1,000.00, or both.

22 (c) For a second or subsequent offense, by imprisonment for
23 not more than 1 year or a fine of not less than \$1,000.00, or
24 both.

25 (9) As used in this section, "licensed health care
26 professional" means an individual licensed or registered under
27 article 15 of the public health code, 1978 PA 368, MCL 333.16101

1 to 333.18838.

2 Enacting section 1. This amendatory act does not take
3 effect unless House Bill No. 4655 of the 92nd Legislature is
4 enacted into law.