

SUBSTITUTE FOR
HOUSE BILL NO. 4065

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7218 and 7401 (MCL 333.7218 and 333.7401),
section 7401 as amended by 1996 PA 249, and by adding section
7401a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7218. (1) The following controlled substances are
2 included in schedule 4:

3 (A) Any material, compound, mixture, or preparation
4 CONTAINING ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A
5 POTENTIAL FOR ABUSE ASSOCIATED WITH A DEPRESSANT EFFECT ON THE
6 CENTRAL NERVOUS SYSTEM, including ~~its~~ THEIR salts, isomers, and
7 salts of isomers ~~when~~ IF the existence of the salts, isomers,
8 and salts of isomers is possible within the specific chemical
9 designation: ~~as included in schedule 4, which contains any~~

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~~1 quantity of the following substances having a potential for abuse
2 associated with a depressant effect on the central nervous
3 system:~~

4

5 Barbital Flurazepam

6 Chloral Betaine Lorazepam

7 GAMMA - HYDROXYBUTYRATE

8 Chloral Hydrate Mebutamate

9 Chlordiazepoxide Meproamate

10 Clonazepam Methohexital

11 Clorazepate Methylphenobarbital

12 Dextropropoxyphene Oxazepam

13 Diazepam Paraldehyde

14 Ethchlorvynol Petrichloral

15 Ethinamate Phenobarbital

16 FLUNITRAZEPAM

17 Prazepam

~~18 (2) The following controlled substances are included in
19 schedule 4:~~

20 (B) Any material, compound, mixture, or preparation
21 CONTAINING ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A
22 POTENTIAL FOR ABUSE ASSOCIATED WITH AN EFFECT ON THE CENTRAL NER-
23 VOUS SYSTEM, including ~~its~~ THEIR salts, ~~isomers (whether~~
24 optical, ~~position~~ POSITIONAL, or geometric) ISOMERS, and
25 salts of the isomers ~~when~~ IF the existence of the salts, iso-
26 mers, and salts of isomers is possible. ~~, which contains any~~

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1 ~~quantity of the following substances having a potential for abuse~~
2 ~~associated with a effect on the central nervous system:~~

3 Fenfluramine

4 ~~(3) The following controlled substances are included in~~
5 ~~schedule 4:~~

6 (C) Any material, compound, mixture, or preparation
7 CONTAINING ANY QUANTITY OF THE FOLLOWING SUBSTANCES HAVING A
8 POTENTIAL FOR ABUSE ASSOCIATED WITH A STIMULANT EFFECT ON THE
9 CENTRAL NERVOUS SYSTEM, including ~~its~~ THEIR salts, ~~isomers,~~
10 ~~(whether~~ optical, ~~position~~ POSITIONAL, or geometric ~~)~~
11 ISOMERS, and salts of the isomers ~~when~~ IF the existence of the
12 salts, isomers, and salts of isomers is possible within the spe-
13 cific chemical designation. ~~, which contains any quantity of the~~
14 ~~following substances having a potential for abuse associated with~~
15 ~~a stimulant effect on the central nervous system:~~

16 Diethylpropion

17 Phentermine

18 Pemoline, including organometallic complexes and chelates
19 ~~thereof~~ OF PEMOLINE.

20 (2) ~~(4)~~ The administrator may except by rule any compound,
21 mixture or preparation containing any substance listed in subsec-
22 tion (1) ~~, (2), or (3)~~ from the application of all or any part
23 of this article if the compound, mixture or preparation contains
24 1 or more active medicinal ingredients not having a depressant or
25 stimulant effect on the central nervous system ~~,~~ and if the
26 admixtures are ~~included~~ in combinations, quantity, proportion,
27 or concentration that vitiate the potential for abuse of the

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1 substances ~~which have~~ HAVING a depressant or stimulant effect
2 on the central nervous system.

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

13 (2) ~~A~~ EXCEPT AS PROVIDED IN SECTION 7401A, A person who
14 violates this section as to:

15 (a) A controlled substance classified in schedule 1 or 2
16 that is a narcotic drug or a drug described in section
17 7214(a)(iv) and:

18 (i) Which is in an amount of 650 grams or more of any mix-
19 ture containing that substance is guilty of a felony ~~and shall~~
20 ~~be imprisoned for life except as otherwise provided in this~~
21 ~~subparagraph. A person convicted of violating this subparagraph~~
22 ~~may be punished as provided by law by imposing a sentence of~~
23 ~~imprisonment for any term of years but not less than 25 years if~~
24 ~~any of the following apply:~~ PUNISHABLE BY IMPRISONMENT FOR LIFE
25 OR ANY TERM OF YEARS [BUT NOT LESS THAN 20 YEARS].

26 ~~(A) The person is within the jurisdiction of the circuit~~
27 ~~court or recorder's court of the city of Detroit under~~

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1 ~~section 606 of the revised judicature act of 1961, Act No. 236 of~~
2 ~~the Public Acts of 1961, being section 600.606 of the Michigan~~
3 ~~Compiled Laws, section 4 of chapter XIIIA of Act No. 288 of the~~
4 ~~Public Acts of 1939, being section 712A.4 of the Michigan~~
5 ~~Compiled Laws, or section 10A(1)(c) of Act No. 369 of the Public~~
6 ~~Acts of 1919, being section 725.10A of the Michigan Compiled~~
7 ~~Laws.~~

8 ~~(B) The person is being sentenced under section 18(1)(n) of~~
9 ~~chapter XIIIA of Act No. 288 of the Public Acts of 1939, being~~
10 ~~section 712A.18 of the Michigan Compiled Laws.~~

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

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

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

24 (b) Any other controlled substance classified in schedule 1,
25 2, or 3, except marihuana is guilty of a felony punishable by
26 imprisonment for not more than 7 years or a fine of not more than
27 \$10,000.00, or both.

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

4 (d) Marihuana or a mixture containing marihuana — is
5 guilty of a felony punishable as follows:

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

9 (ii) If the amount is 5 kilograms or more but less than 45
10 kilograms, or 20 plants or more but fewer than 200 plants, by
11 imprisonment for not more than 7 years or a fine of not more than
12 \$500,000.00, or both.

13 (iii) If the amount is less than 5 kilograms or fewer than
14 20 plants, by imprisonment for not more than 4 years or a fine of
15 not more than \$20,000.00, or both.

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

19 (f) An official prescription form or a counterfeit official
20 prescription form — is guilty of a felony punishable by impris-
21 onment for not more than 20 years or a fine of not more than
22 \$25,000.00, or both.

23 (g) A prescription form or a counterfeit prescription form
24 other than an official prescription form or a counterfeit offi-
25 cial prescription form — is guilty of a felony punishable by
26 imprisonment for not more than 7 years or a fine of not more than
27 \$5,000.00, or both.

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

12 (4) The court may depart from the minimum term of imprison-
13 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if
14 the court finds on the record that there are substantial and com-
15 pelling reasons to do so. In addition, if any of the following
16 apply, the court may depart from the minimum term of imprisonment
17 authorized under subsection (2)(a)(ii), (iii), or (iv) if the
18 individual has not previously been convicted of a felony or an
19 assaultive crime and has not been convicted of another felony or
20 assaultive crime arising from the same transaction as the viola-
21 tion of this section:

22 (a) The person is within the jurisdiction of the circuit
23 court or recorder's court of the city of Detroit under
24 section 606 of the revised judicature act of 1961, ~~Act No. 236~~
25 ~~of the Public Acts of 1961, being section 600.606 of the Michigan~~
26 ~~Compiled Laws, section 4 of chapter XIII A of Act No. 288 of the~~
27 ~~Public Acts of 1939, being section 712A.4 of the Michigan~~

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1 ~~Compiled Laws, or section 10a(1)(c) of Act No. 369 of the Public~~
2 ~~Acts of 1919, being section 725.10a of the Michigan Compiled~~
3 ~~Laws— 1961 PA 236, MCL 600.606, SECTION 4 OF CHAPTER XIIIA OF 1939~~
4 ~~PA 288, MCL 712A.4, OR SECTION 10A(1)(C) OF 1919 PA 369, MCL~~
5 ~~725.10A.~~

6 (b) The person is being sentenced under section 18(1)(n) of
7 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
8 ~~section 712A.18 of the Michigan Compiled Laws.— 1939 PA 288, MCL~~
9 ~~712A.18.~~

10 (5) As used in this section:

11 (a) "Assaultive crime" means a violation of chapter XI of
12 the Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
13 ~~being sections 750.81 to 750.90 of the Michigan Compiled Laws—~~
14 ~~1931 PA 328, MCL 750.81 TO 750.90.~~

15 (b) "Plant" means a marihuana plant that has produced coty-
16 ledons or a cutting of a marihuana plant that has produced
17 cotyledons.

18 SEC. 7401A. (1) A PERSON WHO, WITHOUT AN INDIVIDUAL'S CON-
19 SENT, DELIVERS A CONTROLLED SUBSTANCE OR CAUSES A CONTROLLED SUB-
20 STANCE TO BE DELIVERED TO THAT INDIVIDUAL TO COMMIT OR ATTEMPT TO
21 COMMIT A VIOLATION OF SECTION 520B, 520C, 520D, 520E, OR 520G OF
22 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,
23 750.520D, 750.520E, AND 750.520G, AGAINST THAT INDIVIDUAL IS
24 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN
25 20 YEARS.

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1 (2) A CONVICTION OR SENTENCE UNDER THIS SECTION DOES NOT
2 PROHIBIT A CONVICTION OR SENTENCE FOR ANY OTHER CRIME ARISING OUT
3 OF THE SAME TRANSACTION.

4 (3) THIS SECTION APPLIES REGARDLESS OF WHETHER THE PERSON IS
5 CONVICTED OF A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 520B,
6 520C, 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA
7 328, MCL 750.520B, 750.520C, 750.520D, 750.520E, AND 750.520G.

8 Enacting section 1. This amendatory act takes effect
9 January 1, 1998.