

# SENATE BILL No. 1601

November 6, 2008, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7401 and 7403 (MCL 333.7401 and 333.7403), as  
amended by 2002 PA 710; and to repeal acts and parts of acts.

**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  
7 other than legitimate and professionally recognized therapeutic or  
8 scientific purposes or outside the scope of practice of the  
9 practitioner, licensee, or applicant.

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

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

4 (i) Which is in an amount of 1,000 grams or more of any mixture  
5 containing that substance is guilty of a felony punishable by  
6 imprisonment for life or any term of years or a fine of not more  
7 than \$1,000,000.00, or both.

8 (ii) Which is in an amount of 450 grams or more, but less than  
9 1,000 grams, of any mixture containing that substance is guilty of  
10 a felony and punishable by imprisonment for not more than 30 years  
11 or a fine of not more than \$500,000.00, or both.

12 (iii) Which is in an amount of 50 grams or more, but less than  
13 450 grams, of any mixture containing that substance is guilty of a  
14 felony punishable by imprisonment for not more than 20 years or a  
15 fine of not more than \$250,000.00, or both.

16 (iv) Which is in an amount less than 50 grams, of any mixture  
17 containing that substance is guilty of a felony punishable by  
18 imprisonment for not more than 20 years or a fine of not more than  
19 \$25,000.00, or both.

20 (b) Either of the following:

21 (i) A substance described in section 7212(1) (g) or 7214(c) (ii)  
22 is guilty of a felony punishable by imprisonment for not more than  
23 20 years or a fine of not more than \$25,000.00, or both.

24 (ii) 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.

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

4 (d) Marihuana or a mixture containing marihuana is guilty of a  
5 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 20  
14 plants, by imprisonment for not more than 4 years or a fine of not  
15 more than \$20,000.00, or both.

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

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

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

25 (4) If an individual was sentenced to lifetime probation under  
26 subsection (2)(a)(iv) **AS IT EXISTED** before ~~the effective date of the~~  
27 ~~amendatory act that added this subsection~~ **MARCH 1, 2003** and the

1 individual has served 5 or more years of that probationary period,  
2 the probation officer for that individual may recommend to the  
3 court that the court discharge the individual from probation. If an  
4 individual's probation officer does not recommend discharge as  
5 provided in this subsection, with notice to the prosecutor, the  
6 individual may petition the court seeking resentencing under the  
7 court rules. The court may discharge an individual from probation  
8 as provided in this subsection. An individual may file more than 1  
9 motion seeking resentencing under this subsection.

10 (5) As used in this section, "plant" means a marihuana plant  
11 that has produced cotyledons or a cutting of a marihuana plant that  
12 has produced cotyledons.

13 Sec. 7403. (1) A person shall not knowingly or intentionally  
14 possess a controlled substance, a controlled substance analogue, or  
15 a prescription form unless the controlled substance, controlled  
16 substance analogue, or prescription form was obtained directly  
17 from, or pursuant to, a valid prescription or order of a  
18 practitioner while acting in the course of the practitioner's  
19 professional practice, or except as otherwise authorized by this  
20 article.

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

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

24 (i) Which is in an amount of 1,000 grams or more of any mixture  
25 containing that substance is guilty of a felony punishable by  
26 imprisonment for life or any term of years or a fine of not more  
27 than \$1,000,000.00, or both.

1           (ii) Which is in an amount of 450 grams or more, but less than  
2 1,000 grams, of any mixture containing that substance is guilty of  
3 a felony punishable by imprisonment for not more than 30 years or a  
4 fine of not more than \$500,000.00, or both.

5           (iii) Which is in an amount of 50 grams or more, but less than  
6 450 grams, of any mixture containing that substance is guilty of a  
7 felony punishable by imprisonment for not more than 20 years or a  
8 fine of not more than \$250,000.00, or both.

9           (iv) Which is in an amount of 25 grams or more, but less than  
10 50 grams of any mixture containing that substance is guilty of a  
11 felony punishable by imprisonment for not more than 4 years or a  
12 fine of not more than \$25,000.00, or both.

13           (v) Which is in an amount less than 25 grams of any mixture  
14 containing that substance is guilty of a felony punishable by  
15 imprisonment for not more than 4 years or a fine of not more than  
16 \$25,000.00, or both.

17           (b) Either of the following:

18           (i) A substance described in section 7212(1)(g) or 7214(c)(ii)  
19 is guilty of a felony punishable by imprisonment for not more than  
20 10 years or a fine of not more than \$15,000.00, or both.

21           (ii) A controlled substance classified in schedule 1, 2, 3, or  
22 4, except a controlled substance for which a penalty is prescribed  
23 in subdivision (a), (b)(i), (c), or (d), or a controlled substance  
24 analogue is guilty of a felony punishable by imprisonment for not  
25 more than 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 substance

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

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

10 (3) If an individual was sentenced to lifetime probation under  
11 subsection (2) (a) (iv) **AS IT EXISTED** before ~~the effective date of the~~  
12 ~~amendatory act that added this subsection~~ **MARCH 1, 2003** and the  
13 individual has served 5 or more years of that probationary period,  
14 the probation officer for that individual may recommend to the  
15 court that the court discharge the individual from probation. If an  
16 individual's probation officer does not recommend discharge as  
17 provided in this subsection, with notice to the prosecutor, the  
18 individual may petition the court seeking resentencing under the  
19 court rules. The court may discharge an individual from probation  
20 as provided in this subsection. An individual may file more than 1  
21 motion seeking resentencing under this subsection.

22 Enacting section 1. Section 7413 of the public health code,  
23 1978 PA 368, MCL 333.7413, is repealed.

24 Enacting section 2. This amendatory act does not take effect  
25 unless all of the following bills of the 94th Legislature are  
26 enacted into law:

27 (a) Senate Bill No. 1600.

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(b) Senate Bill No. 1602.

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