

HOUSE BILL NO. 5124

October 11, 2023, Introduced by Reps. Bollin, Lightner and Witwer and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 7401 (MCL 333.7401), as amended by 2016 PA 548.

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

1 other than legitimate and professionally recognized therapeutic or
2 scientific purposes or outside the scope of practice of the
3 practitioner, licensee, or applicant.

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

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

7 (i) ~~Which~~ **That** is in an amount of 1,000 grams or more of any
8 mixture containing that substance is guilty of a felony punishable
9 by imprisonment ~~for life or any term of years~~ or a fine, ~~of not~~
10 ~~more than \$1,000,000.00,~~ or both, **as provided under subsection (5).**

11 (ii) ~~Which~~ **That** is in an amount of 450 grams or more, but less
12 than 1,000 grams, of any mixture containing that substance is
13 guilty of a felony and punishable by imprisonment ~~for not more than~~
14 ~~30 years~~ or a fine, ~~of not more than \$500,000.00,~~ or both, **as**
15 **provided under subsection (6).**

16 (iii) ~~Which~~ **That** is in an amount of 50 grams or more, but less
17 than 450 grams, of any mixture containing that substance is guilty
18 of a felony punishable by imprisonment ~~for not more than 20 years~~
19 or a fine, ~~of not more than \$250,000.00,~~ or both, **as provided under**
20 **subsection (7).**

21 (iv) ~~Which~~ **That** is in an amount less than 50 grams, of any
22 mixture containing that substance is guilty of a felony punishable
23 by imprisonment ~~for not more than 20 years~~ or a fine, ~~of not more~~
24 ~~than \$25,000.00,~~ or both, **as provided under subsection (8).**

25 (b) Either of the following:

26 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)
27 is guilty of a felony punishable by imprisonment for not more than
28 20 years or a fine of not more than \$25,000.00, or both.

29 (ii) Any other controlled substance classified in schedule 1,

1 2, or 3, except marihuana, ~~or~~ a substance listed in section
2 7212(1)(d), **or a substance listed in subsections (5) to (8)**, is
3 guilty of a felony punishable by imprisonment for not more than 7
4 years or a fine of not more than \$10,000.00, or both.

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

8 (d) Marihuana, a mixture containing marihuana, or a substance
9 listed in section 7212(1)(d) is guilty of a felony punishable as
10 follows:

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

14 (ii) If the amount is 5 kilograms or more but less than 45
15 kilograms, or 20 plants or more but fewer than 200 plants, by
16 imprisonment for not more than 7 years or a fine of not more than
17 \$500,000.00, or both.

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

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

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

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

1 (4) If an individual was sentenced to lifetime probation under
2 subsection (2) (a) (iv) as it existed before March 1, 2003 and the
3 individual has served 5 or more years of that probationary period,
4 the probation officer for that individual may recommend to the
5 court that the court discharge the individual from probation. If an
6 individual's probation officer does not recommend discharge as
7 provided in this subsection, with notice to the prosecutor, the
8 individual may petition the court seeking resentencing under the
9 court rules. The court may discharge an individual from probation
10 as provided in this subsection. An individual may file more than 1
11 motion seeking resentencing under this subsection.

12 **(5) A person who violates this section as described in**
13 **subsection (2) (a) (i) is subject to the following penalties:**

14 **(a) If the substance is either of the following, by**
15 **imprisonment for life or any term of years or a fine of not more**
16 **than \$1,000,000.00, or both:**

17 **(i) Heroin, fentanyl, carfentanil, or any derivative of heroin,**
18 **fentanyl, or carfentanil.**

19 **(ii) An opiate other than those listed under subparagraph (i),**
20 **or any derivative of an opiate other than those listed under**
21 **subparagraph (i).**

22 **(b) If the substance is a substance that is not listed in**
23 **subdivision (a), by imprisonment for not more than 30 years or a**
24 **fine of not more than \$1,000,000.00, or both.**

25 **(6) A person who violates this section as described in**
26 **subsection (2) (a) (ii) is subject to the following penalties:**

27 **(a) If the substance is either of the following, by**
28 **imprisonment for not more than 30 years or a fine of not more than**
29 **\$500,000.00, or both:**

1 (i) Heroin, fentanyl, carfentanil, or any derivative of heroin,
2 fentanyl, or carfentanil.

3 (ii) An opiate other than those listed under subparagraph (i),
4 or any derivative of an opiate other than those listed under
5 subparagraph (i).

6 (b) If the substance is a substance that is not listed in
7 subdivision (a), by imprisonment for not more than 20 years or a
8 fine of not more than \$500,000.00, or both.

9 (7) A person who violates this section as described in
10 subsection (2) (a) (iii) is subject to the following penalties:

11 (a) If the substance is heroin, fentanyl, carfentanil, or any
12 derivative of heroin, fentanyl, or carfentanil, by imprisonment for
13 not more than 20 years or a fine of not more than \$250,000.00, or
14 both.

15 (b) If the substance is an opiate other than those listed
16 under subdivision (a), or any derivative of an opiate other than
17 those listed under subdivision (a), by imprisonment for not more
18 than 20 years or a fine of not more than \$250,000.00, or both.

19 (c) If the substance is a substance that is not listed in
20 subdivision (a) or (b), by imprisonment for not more than 20 years
21 or a fine of not more than \$250,000.00, or both.

22 (8) A person who violates this section as described in
23 subsection (2) (a) (iv) is subject to the following penalties:

24 (a) If the substance is heroin, fentanyl, carfentanil, or any
25 derivative of heroin, fentanyl, or carfentanil, by imprisonment for
26 not more than 20 years or a fine of not more than \$25,000.00, or
27 both.

28 (b) If the substance is a substance that is not listed under
29 subdivision (a), by imprisonment for not more than 10 years or a

1 **fine of not more than \$25,000.00, or both.**

2 (9) ~~(5)~~—As used in this section, "plant" means a marihuana
3 plant that has produced cotyledons or a cutting of a marihuana
4 plant that has produced cotyledons.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.