

# SENATE BILL NO. 499

September 14, 2023, Introduced by Senator IRWIN and referred to the Committee on Regulatory Affairs.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7401, 7403, and 7404 (MCL 333.7401, 333.7403, and 333.7404), section 7401 as amended by 2016 PA 548, section 7403 as amended by 2016 PA 307, and section 7404 as amended by 2016 PA 308.

**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

1 manufacture, create, or deliver a controlled substance, a  
2 prescription form, or a counterfeit prescription form. A  
3 practitioner licensed by the administrator under this article shall  
4 not dispense, prescribe, or administer a controlled substance for  
5 other than legitimate and professionally recognized therapeutic or  
6 scientific purposes or outside the scope of practice of the  
7 practitioner, licensee, or applicant.

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

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

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

15 (ii) Which is in an amount of 450 grams or more, but less than  
16 1,000 grams, of any mixture containing that substance is guilty of  
17 a felony and punishable by imprisonment for not more than 30 years  
18 or a fine of not more than \$500,000.00, or both.

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

23 (iv) Which is in an amount less than 50 grams, of any mixture  
24 containing that substance is guilty of a felony punishable by  
25 imprisonment for not more than 20 years or a fine of not more than  
26 \$25,000.00, or both.

27 (b) Either of the following:

28 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)  
29 is guilty of a felony punishable by imprisonment for not more than

1 20 years or a fine of not more than \$25,000.00, or both.

2 (ii) Any other controlled substance classified in schedule 1,  
3 2, or 3, except marihuana or a substance listed in section  
4 7212(1)(d), is guilty of a felony punishable by imprisonment for  
5 not more than 7 years or a fine of not more than \$10,000.00, or  
6 both.

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

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

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

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

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

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

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

29 (3) A term of imprisonment imposed under subsection (2)(a) may

1 be imposed to run consecutively with any term of imprisonment  
2 imposed for the commission of another felony.

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

14 (5) **An individual is not in violation of this section related**  
15 **to an entheogenic plant or fungus if the individual manufactures,**  
16 **creates, delivers, or possesses with intent to manufacture, create,**  
17 **or deliver the entheogenic plant or fungus without receiving money**  
18 **or other valuable consideration for the entheogenic plant or**  
19 **fungus.**

20 (6) ~~(5)~~ As used in this section: ~~,"plant"~~

21 (a) "Entheogenic plant or fungus" means a plant or fungus of  
22 any species in which there is naturally occurring any of the  
23 following substances listed in section 7212(1) (c), including any  
24 mixture or preparation thereof, or any other natural material  
25 containing an indole amine, tryptamine, or phenethylamine compound:

26 (i) Dimethyltryptamine.

27 (ii) Ibogaine.

28 (iii) Mescaline.

29 (iv) Psilocybin.

1           (v) **Psilocyn.**

2           (b) **"Marihuana plant"** means a marihuana plant that has  
3 produced cotyledons or a cutting of a marihuana plant that has  
4 produced cotyledons.

5           (c) **"Money or other valuable consideration" does not include a**  
6 **reasonable fee for counseling, spiritual guidance, or a related**  
7 **service that is provided in conjunction with the use of an**  
8 **entheogenic plant or fungus under the guidance and supervision of**  
9 **an individual providing the service.**

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

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

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

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

25           (ii) That is in an amount of 450 grams or more, but less than  
26 1,000 grams, of any mixture containing that substance is guilty of  
27 a felony punishable by imprisonment for not more than 30 years or a  
28 fine of not more than \$500,000.00, or both.

29           (iii) That is in an amount of 50 grams or more, but less than

1 450 grams, of any mixture containing that substance is guilty of a  
2 felony punishable by imprisonment for not more than 20 years or a  
3 fine of not more than \$250,000.00, or both.

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

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

12 (b) Either of the following:

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

16 (ii) A controlled substance classified in schedule 1, 2, 3, or  
17 4, except a controlled substance for which a penalty is prescribed  
18 in subparagraph (i) or subdivision (a), (c), or (d), or a controlled  
19 substance analogue is guilty of a felony punishable by imprisonment  
20 for not more than 2 years or a fine of not more than \$2,000.00, or  
21 both.

22 (c) Lysergic acid diethylamide, peyote, mescaline,  
23 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
24 classified in schedule 5 is guilty of a misdemeanor punishable by  
25 imprisonment for not more than 1 year or a fine of not more than  
26 \$2,000.00, or both.

27 (d) Marihuana or a substance listed in section 7212(1)(d) is  
28 guilty of a misdemeanor punishable by imprisonment for not more  
29 than 1 year or a fine of not more than \$2,000.00, or both.

1 (e) A prescription form is guilty of a misdemeanor punishable  
2 by imprisonment for not more than 1 year or a fine of not more than  
3 \$1,000.00, or both.

4 (3) The following individuals are not in violation of this  
5 section:

6 (a) An individual who seeks medical assistance for himself or  
7 herself or who requires medical assistance and is presented for  
8 assistance by another individual if he or she is incapacitated  
9 because of a drug overdose or other perceived medical emergency  
10 arising from the use of a controlled substance or a controlled  
11 substance analogue that he or she possesses or possessed in an  
12 amount sufficient only for personal use and the evidence of his or  
13 her violation of this section is obtained as a result of the  
14 individual's seeking or being presented for medical assistance.

15 (b) An individual who in good faith attempts to procure  
16 medical assistance for another individual or who accompanies  
17 another individual who requires medical assistance for a drug  
18 overdose or other perceived medical emergency arising from the use  
19 of a controlled substance or a controlled substance analogue that  
20 he or she possesses or possessed in an amount sufficient only for  
21 personal use and the evidence of his or her violation of this  
22 section is obtained as a result of the individual's attempting to  
23 procure medical assistance for another individual or as a result of  
24 the individual's accompanying another individual who requires  
25 medical assistance to a health facility or agency.

26 **(c) An individual who possesses an entheogenic plant or fungus**  
27 **is not in violation of this section for possessing the entheogenic**  
28 **plant or fungus.**

29 (4) A health facility or agency shall develop a process for

1 notification of the parent or parents, guardian, or custodian of a  
2 minor under the age of 18 who is not emancipated under 1968 PA 293,  
3 MCL 722.1 to 722.6, and who voluntarily presents himself or  
4 herself, or is presented by another individual if he or she is  
5 incapacitated, to a health facility or agency for emergency medical  
6 treatment as provided in subsection (3) **(a) and (b)**. A health  
7 facility or agency shall not provide notification to a parent or  
8 parents, guardian, or custodian under this subsection for  
9 nonemergency treatment without obtaining the minor's consent.

10 (5) The exemption from prosecution under this section provided  
11 in subsection (3) does not prevent the investigation, arrest,  
12 charging, or prosecution of an individual for any other violation  
13 of the laws of this state or be grounds for suppression of evidence  
14 in the prosecution of any other criminal charges.

15 (6) If an individual was sentenced to lifetime probation under  
16 subsection (2) (a) (iv) as it existed before March 1, 2003 and the  
17 individual has served 5 or more years of that probationary period,  
18 the probation officer for that individual may recommend to the  
19 court that the court discharge the individual from probation. If an  
20 individual's probation officer does not recommend discharge as  
21 provided in this subsection, with notice to the prosecutor, the  
22 individual may petition the court seeking resentencing under the  
23 court rules. The court may discharge an individual from probation  
24 as provided in this subsection. An individual may file more than 1  
25 motion seeking resentencing under this subsection.

26 (7) As used in this section:

27 (a) "Drug overdose" means a condition including, but not  
28 limited to, extreme physical illness, decreased level of  
29 consciousness, respiratory depression, coma, mania, or death, that



1 is the result of consumption or use of a controlled substance or a  
2 controlled substance analogue or a substance with which the  
3 controlled substance or controlled substance analogue was combined,  
4 or that a layperson would reasonably believe to be a drug overdose  
5 that requires medical assistance.

6 (b) "Entheogenic plant or fungus" means a plant or fungus of  
7 any species in which there is naturally occurring any of the  
8 following substances listed in section 7212(1)(c), including any  
9 mixture or preparation thereof, or any other natural material  
10 containing an indole amine, tryptamine, or phenethylamine compound:

11 (i) Dimethyltryptamine.

12 (ii) Ibogaine.

13 (iii) Mescaline.

14 (iv) Psilocybin.

15 (v) Psilocyn.

16 (c) ~~(b)~~—"Seeks medical assistance" means reporting a drug  
17 overdose or other medical emergency to law enforcement, the 9-1-1  
18 system, a poison control center, or a medical provider, or  
19 assisting someone in reporting a drug overdose or other medical  
20 emergency.

21 Sec. 7404. (1) A person shall not use a controlled substance  
22 or controlled substance analogue unless the substance was obtained  
23 directly from, or pursuant to, a valid prescription or order of a  
24 practitioner while acting in the course of the practitioner's  
25 professional practice, or except as otherwise authorized by this  
26 article.

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

28 (a) A controlled substance classified in schedule 1 or 2 as a  
29 narcotic drug or a drug described in section 7212(1)(h) or

1 7214(a) (iv) or (c) (ii) 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 (b) A controlled substance classified in schedule 1, 2, 3, or  
5 4, except a controlled substance for which a penalty is prescribed  
6 in subdivision (a), (c), or (d), or a controlled substance  
7 analogue, is guilty of a misdemeanor punishable by imprisonment for  
8 not more than 1 year or a fine of not more than \$1,000.00, or both.

9 (c) Lysergic acid diethylamide, peyote, mescaline,  
10 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
11 classified in schedule 5 is guilty of a misdemeanor punishable by  
12 imprisonment for not more than 6 months or a fine of not more than  
13 \$500.00, or both.

14 (d) Marihuana, ~~eatha edulis, salvia divinorum,~~ **Catha edulis,**  
15 **Salva divinorum,** or a substance described in section 7212(1)(d) or  
16 (i) is guilty of a misdemeanor punishable by imprisonment for not  
17 more than 90 days or a fine of not more than \$100.00, or both.

18 (3) The following individuals are not in violation of this  
19 section:

20 (a) An individual who seeks medical assistance for himself or  
21 herself or who requires medical assistance and is presented for  
22 assistance by another individual if he or she is incapacitated  
23 because of a drug overdose or other perceived medical emergency  
24 arising from the use of a controlled substance or a controlled  
25 substance analogue that he or she possesses or possessed in an  
26 amount sufficient only for personal use and the evidence of his or  
27 her violation of this section is obtained as a result of the  
28 individual's seeking or being presented for medical assistance.

29 (b) An individual who in good faith attempts to procure

1 medical assistance for another individual or who accompanies  
2 another individual who requires medical assistance for a drug  
3 overdose or other perceived medical emergency arising from the use  
4 of a controlled substance or a controlled substance analogue that  
5 he or she possesses or possessed in an amount sufficient only for  
6 personal use and the evidence of his or her violation of this  
7 section is obtained as a result of the individual's attempting to  
8 procure medical assistance for another individual or as a result of  
9 the individual's accompanying another individual who requires  
10 medical assistance to a health facility or agency.

11 **(c) An individual who uses an entheogenic plant or fungus is**  
12 **not in violation of this section for using the entheogenic plant or**  
13 **fungus.**

14 (4) A health facility or agency shall develop a process for  
15 notification of the parent or parents, guardian, or custodian of a  
16 minor under the age of 18 who is not emancipated under 1968 PA 293,  
17 MCL 722.1 to 722.6, and who voluntarily presents himself or  
18 herself, or is presented by another individual if he or she is  
19 incapacitated, to a health facility or agency for emergency medical  
20 treatment as provided in subsection (3) **(a) and (b)**. A health  
21 facility or agency shall not provide notification to a parent or  
22 parents, guardian, or custodian under this subsection for  
23 nonemergency treatment without obtaining the minor's consent.

24 (5) The exemption from prosecution under this section provided  
25 in subsection (3) does not prevent the investigation, arrest,  
26 charging, or prosecution of an individual for any other violation  
27 of the laws of this state, or be grounds for suppression of  
28 evidence in the prosecution of any other criminal charges.

29 (6) As used in this section:

1 (a) "Drug overdose" means a condition including, but not  
2 limited to, extreme physical illness, decreased level of  
3 consciousness, respiratory depression, coma, mania, or death, that  
4 is the result of consumption or use of a controlled substance or a  
5 controlled substance analogue or a substance with which the  
6 controlled substance or controlled substance analogue was combined,  
7 or that a layperson would reasonably believe to be a drug overdose  
8 that requires medical assistance.

9 (b) "Entheogenic plant or fungus" means a plant or fungus of  
10 any species in which there is naturally occurring any of the  
11 following substances listed in section 7212(1)(c), including any  
12 mixture or preparation thereof, or any other natural material  
13 containing an indole amine, tryptamine, or phenethylamine compound:

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22 assisting someone in reporting a drug overdose or other medical  
23 emergency.