

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5394

(As passed the House, December 3, 2002)

(As amended by the Senate, December 12, 2002)

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 2001 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7401. (1) Except as authorized by this article, a
2 person shall not manufacture, create, deliver, or possess with
3 intent to manufacture, create, or deliver a controlled substance,
4 a prescription form, or a counterfeit prescription form. A prac-
5 titioner 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
8 or scientific purposes or outside the scope of practice of the
9 practitioner, licensee, or applicant.

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

2

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

2 (a) A controlled substance classified in schedule 1 or 2
3 that is a narcotic drug or a drug described in section
4 7214(a)(iv) and:

5 (i) Which is in an amount of ~~650~~ 1,000 grams or more of
6 any mixture containing that substance is guilty of a felony pun-
7 ishable by imprisonment for life or any term of years ~~but not~~
8 ~~less than 20 years~~ OR A FINE OF NOT MORE THAN \$1,000,000.00, OR
9 BOTH.

10 (ii) Which is in an amount of ~~225~~ 450 grams or more, but
11 less than ~~650~~ 1,000 grams, of any mixture containing that sub-
12 stance is guilty of a felony and ~~shall be imprisoned~~ PUNISHABLE
13 BY IMPRISONMENT for not ~~less than 20 years nor~~ more than 30
14 years OR A FINE OF NOT MORE THAN \$500,000.00, OR BOTH.

15 (iii) Which is in an amount of 50 grams or more, but less
16 than ~~225~~ 450 grams, of any mixture containing that substance is
17 guilty of a felony ~~and shall be imprisoned~~ PUNISHABLE BY
18 IMPRISONMENT for not ~~less than 10 years nor~~ more than 20 years
19 OR A FINE OF NOT MORE THAN \$250,000.00, OR BOTH.

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

26 (b) Either of the following:

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

3

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

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

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

11 (d) Marihuana or a mixture containing marihuana is guilty of
12 a felony punishable as follows:

13 (i) If the amount is 45 kilograms or more, or 200 plants or
14 more, by imprisonment for not more than 15 years or a fine of not
15 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 plants or more but fewer than 200 plants, by
18 imprisonment for not more than 7 years or a fine of not more than
19 \$500,000.00, or both.

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

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

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

4

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

4 (3) A term of imprisonment imposed under subsection (2)(a)
5 ~~or section 7403(2)(a)(i), (ii), (iii), or (iv) shall~~ MAY be
6 imposed to run consecutively with any term of imprisonment
7 imposed for the commission of another felony. ~~An individual~~
8 ~~subject to a mandatory term of imprisonment under subsection~~
9 ~~(2)(a) or section 7403(2)(a)(i), (ii), (iii), or (iv) is not eli-~~
10 ~~gible for probation, suspension of that sentence, or parole~~
11 ~~during that mandatory term, except to the extent that those pro-~~
12 ~~visions permit probation for life, and shall not receive a reduc-~~
13 ~~tion in that mandatory term of imprisonment by disciplinary cred-~~
14 ~~its or any other type of sentence credit reduction.~~

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

25 ~~(a) The person is within the jurisdiction of the circuit~~
26 ~~court under section 606 of the revised judicature act of 1961,~~

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

5

1 ~~1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the~~
2 ~~probate code of 1939, 1939 PA 288, MCL 712A.4.~~

3 ~~(b) The person is being sentenced under section 18(1)(n) of~~
4 ~~chapter XIIA of the probate code of 1939, 1939 PA 288,~~
5 ~~MCL 712A.18.~~

6 (4) IF AN INDIVIDUAL WAS SENTENCED TO LIFETIME PROBATION
7 UNDER SUBSECTION (2)(A)(iv) BEFORE THE EFFECTIVE DATE OF THE
8 AMENDATORY ACT THAT ADDED THIS SUBSECTION AND THE INDIVIDUAL HAS
9 SERVED 5 OR MORE YEARS OF THAT PROBATIONARY PERIOD, THE PROBATION
10 OFFICER FOR THAT INDIVIDUAL MAY RECOMMEND TO THE COURT THAT THE
11 COURT DISCHARGE THE INDIVIDUAL FROM PROBATION. IF AN
12 INDIVIDUAL'S PROBATION OFFICER DOES NOT RECOMMEND DISCHARGE AS
13 PROVIDED IN THIS SUBSECTION, WITH NOTICE TO THE PROSECUTOR, THE
14 INDIVIDUAL MAY PETITION THE COURT SEEKING RESENTENCING UNDER THE
15 COURT RULES. THE COURT MAY DISCHARGE AN INDIVIDUAL FROM PROBA-
16 TION AS PROVIDED IN THIS SUBSECTION. AN INDIVIDUAL MAY FILE MORE
17 THAN 1 MOTION SEEKING RESENTENCING UNDER THIS SUBSECTION.

18 (5) As used in this section, ~~→~~

19 ~~(a) "Assaultive crime" means a violation of sections 81 to~~
20 ~~90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to~~
21 ~~750.90.~~

22 ~~(b) "Plant"~~ "PLANT" means a marihuana plant that has
23 produced cotyledons or a cutting of a marihuana plant that has
24 produced cotyledons.

25 Sec. 7403. (1) A person shall not knowingly or intention-
26 ally possess a controlled substance, a controlled substance
27 analogue, or a prescription form unless the controlled substance,

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

6

1 controlled substance analogue, or prescription form was obtained
2 directly from, or pursuant to, a valid prescription or order of a
3 practitioner while acting in the course of the practitioner's
4 professional practice, or except as otherwise authorized by this
5 article.

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

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

10 (i) Which is in an amount of ~~650~~ 1,000 grams or more of
11 any mixture containing that substance is guilty of a felony ~~and~~
12 ~~shall be imprisoned~~ PUNISHABLE BY IMPRISONMENT for life ~~except~~
13 ~~as otherwise provided in this subparagraph~~ OR ANY TERM OF YEARS
14 OR A FINE OF NOT MORE THAN \$1,000,000.00, OR BOTH. ~~A person~~
15 ~~convicted of violating this subparagraph may be punished as pro-~~
16 ~~vided by law by imposing a sentence of imprisonment for any term~~
17 ~~of years but not less than 25 years if any of the following~~
18 ~~apply:~~

19 ~~(A) The person is within the jurisdiction of the circuit~~
20 ~~court under section 606 of the revised judicature act of 1961,~~
21 ~~1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the~~
22 ~~probate code of 1939, 1939 PA 288, MCL 712A.4.~~

23 ~~(B) The person is being sentenced under section 18(1)(n) of~~
24 ~~chapter XIIA of the probate code of 1939, 1939 PA 288,~~
25 ~~MCL 712A.18.~~

26 (ii) Which is in an amount of ~~225~~ 450 grams or more, but
27 less than ~~650~~ 1,000 grams, of any mixture containing that

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

7

1 substance is guilty of a felony ~~and shall be imprisoned~~
2 PUNISHABLE BY IMPRISONMENT for not ~~less than 20 years nor~~ more
3 than 30 years OR A FINE OF NOT MORE THAN \$500,000.00, OR BOTH.

4 (iii) Which is in an amount of 50 grams or more, but less
5 than ~~225~~ 450 grams, of any mixture containing that substance is
6 guilty of a felony ~~and shall be imprisoned~~ PUNISHABLE BY
7 IMPRISONMENT for not ~~less than 10 years nor~~ more than 20 years
8 OR A FINE OF NOT MORE THAN \$250,000.00, OR BOTH.

9 (iv) Which is in an amount of 25 grams or more, but less
10 than 50 grams of any mixture containing that substance is guilty
11 of a felony ~~and shall be imprisoned~~ PUNISHABLE BY IMPRISONMENT
12 for not ~~less than 1 year and not~~ more than 4 years ~~, and may~~
13 ~~be fined~~ OR A FINE OF not more than \$25,000.00, or ~~placed on~~
14 ~~probation for life~~ BOTH.

15 (v) Which is in an amount less than 25 grams of any mixture
16 containing that substance is guilty of a felony punishable by
17 imprisonment for not more than 4 years or a fine of not more than
18 \$25,000.00, or both.

19 (b) Either of the following:

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

23 (ii) A controlled substance classified in schedule 1, 2, 3,
24 or 4, except a controlled substance for which a penalty is pre-
25 scribed in subdivision (a), (b)(i), (c), or (d), or a controlled
26 substance analogue is guilty of a felony punishable by

HB 5394, As Passed Senate, December 12, 2002

House Bill No. 5394

8

1 imprisonment for not more than 2 years or a fine of not more than
2 \$2,000.00, or both.

3 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-
4 tryptamine, psilocyn, psilocybin, or a controlled substance clas-
5 sified in schedule 5 is guilty of a misdemeanor punishable by
6 imprisonment for not more than 1 year or a fine of not more than
7 \$2,000.00, or both.

8 (d) Marihuana is guilty of a misdemeanor punishable by
9 imprisonment for not more than 1 year or a fine of not more than
10 \$2,000.00, or both.

11 (e) A prescription form is guilty of a misdemeanor punish-
12 able by imprisonment for not more than 1 year or a fine of not
13 more than \$1,000.00, or both.

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

24 ~~(a) The person is within the jurisdiction of the circuit~~
25 ~~court under section 606 of the revised judicature act of 1961,~~
26 ~~1961 PA 236, MCL 600.606, or section 4 of chapter XIIA of the~~
27 ~~probate code of 1939, 1939 PA 288, MCL 712A.4.~~

~~(b) The person is being sentenced under section 18(1)(n) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.~~

~~(4) As used in subsection (3), "assaultive crime" means a violation of sections 81 to 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90.~~

(3) IF AN INDIVIDUAL WAS SENTENCED TO LIFETIME PROBATION UNDER SUBSECTION (2)(A)(iv) BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION AND THE INDIVIDUAL HAS SERVED 5 OR MORE YEARS OF THAT PROBATIONARY PERIOD, THE PROBATION OFFICER FOR THAT INDIVIDUAL MAY RECOMMEND TO THE COURT THAT THE COURT DISCHARGE THE INDIVIDUAL FROM PROBATION. IF AN INDIVIDUAL'S PROBATION OFFICER DOES NOT RECOMMEND DISCHARGE AS PROVIDED IN THIS SUBSECTION, WITH NOTICE TO THE PROSECUTOR, THE INDIVIDUAL MAY PETITION THE COURT SEEKING RESENTENCING UNDER THE COURT RULES. THE COURT MAY DISCHARGE AN INDIVIDUAL FROM PROBATION AS PROVIDED IN THIS SUBSECTION. AN INDIVIDUAL MAY FILE MORE THAN 1 MOTION SEEKING RESENTENCING UNDER THIS SUBSECTION.

Enacting section 1. This amendatory act takes effect March 1, 2003.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) House Bill No. 5395.

(b) House Bill No. 6510.