

SENATE BILL NO. 263

April 11, 2019, Introduced by Senator IRWIN and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7403 and 7404 (MCL 333.7403 and 333.7404), 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. 7403. (1) A person shall not knowingly or intentionally
2 possess a controlled substance, a controlled substance analogue, or
3 a prescription form unless the controlled substance, controlled

1 substance analogue, or prescription form was obtained directly
2 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 that
8 is a narcotic drug or a drug described in section 7214(a) (iv), and:

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

13 (ii) That is in an amount of 450 grams or more, but less than
14 1,000 grams, of any mixture containing that substance is guilty of
15 a felony punishable by imprisonment for not more than 30 years or a
16 fine of not more than \$500,000.00, or both.

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

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

25 (v) That is in an amount less than 25 grams of any mixture
26 containing that substance is guilty of a felony punishable by
27 imprisonment for not more than 4 years or a fine of not more than
28 \$25,000.00, or both.

29 (b) Either of the following:

1 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)
2 is guilty of a felony punishable by imprisonment for not more than
3 10 years or a fine of not more than \$15,000.00, or both.

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

10 (c) Lysergic acid diethylamide, peyote, mescaline,
11 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
12 classified in schedule 5 is guilty of a misdemeanor punishable by
13 imprisonment for not more than 1 year or a fine of not more than
14 \$2,000.00, or both.

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

18 (e) A prescription form is guilty of a misdemeanor punishable
19 by imprisonment for not more than 1 year or a fine of not more than
20 \$1,000.00, or both.

21 (3) The following individuals are not in violation of this
22 section:

23 (a) An individual who seeks medical assistance for himself or
24 herself or who requires medical assistance and is presented for
25 assistance by another individual if he or she is incapacitated
26 because of a drug overdose or other perceived medical emergency
27 arising from the use of a controlled substance or a controlled
28 substance analogue that he or she possesses or possessed in an
29 amount sufficient only for personal use and the evidence of his or

1 her violation of this section is obtained as a result of the
2 individual's seeking or being presented for medical assistance.

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

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 health facility or
21 agency shall not provide notification to a parent or parents,
22 guardian, or custodian under this subsection for nonemergency
23 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 evidence
28 in the prosecution of any other criminal charges.

29 (6) If an individual was sentenced to lifetime probation under

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

11 **(7) A sentence for a violation of subsection (2) (d) relating**
 12 **to marihuana is subject to the marihuana violation sentence**
 13 **reduction act.**

14 **(8) ~~(7)~~**As used in this section:

15 (a) "Drug overdose" means a condition including, but not
 16 limited to, extreme physical illness, decreased level of
 17 consciousness, respiratory depression, coma, mania, or death, that
 18 is the result of consumption or use of a controlled substance or a
 19 controlled substance analogue or a substance with which the
 20 controlled substance or controlled substance analogue was combined,
 21 or that a layperson would reasonably believe to be a drug overdose
 22 that requires medical assistance.

23 (b) "Seeks medical assistance" means reporting a drug overdose
 24 or other medical emergency to law enforcement, the 9-1-1 system, a
 25 poison control center, or a medical provider, or assisting someone
 26 in reporting a drug overdose or other medical emergency.

27 Sec. 7404. (1) A person shall not use a controlled substance
 28 or controlled substance analogue unless the substance was obtained
 29 directly from, or pursuant to, a valid prescription or order of a

1 practitioner while acting in the course of the practitioner's
2 professional practice, or except as otherwise authorized by this
3 article.

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

5 (a) A controlled substance classified in schedule 1 or 2 as a
6 narcotic drug or a drug described in section 7212(1)(h) or
7 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by
8 imprisonment for not more than 1 year or a fine of not more than
9 \$2,000.00, or both.

10 (b) A controlled substance classified in schedule 1, 2, 3, or
11 4, except a controlled substance for which a penalty is prescribed
12 in subdivision (a), (c), or (d), or a controlled substance
13 analogue, is guilty of a misdemeanor punishable by imprisonment for
14 not more than 1 year or a fine of not more than \$1,000.00, or both.

15 (c) Lysergic acid diethylamide, peyote, mescaline,
16 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
17 classified in schedule 5 is guilty of a misdemeanor punishable by
18 imprisonment for not more than 6 months or a fine of not more than
19 \$500.00, or both.

20 (d) Marihuana, catha edulis, salvia divinorum, or a substance
21 described in section 7212(1)(d) or (i) is guilty of a misdemeanor
22 punishable by imprisonment for not more than 90 days or a fine of
23 not more than \$100.00, or both.

24 (3) The following individuals are not in violation of this
25 section:

26 (a) An individual who seeks medical assistance for himself or
27 herself or who requires medical assistance and is presented for
28 assistance by another individual if he or she is incapacitated
29 because of a drug overdose or other perceived medical emergency

1 arising from the use of a controlled substance or a controlled
2 substance analogue that he or she possesses or possessed in an
3 amount sufficient only for personal use and the evidence of his or
4 her violation of this section is obtained as a result of the
5 individual's seeking or being presented for medical assistance.

6 (b) An individual who in good faith attempts to procure
7 medical assistance for another individual or who accompanies
8 another individual who requires medical assistance for a drug
9 overdose or other perceived medical emergency arising from the use
10 of a controlled substance or a controlled substance analogue that
11 he or she possesses or possessed in an amount sufficient only for
12 personal use and the evidence of his or her violation of this
13 section is obtained as a result of the individual's attempting to
14 procure medical assistance for another individual or as a result of
15 the individual's accompanying another individual who requires
16 medical assistance to a health facility or agency.

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

27 (5) The exemption from prosecution under this section provided
28 in subsection (3) does not prevent the investigation, arrest,
29 charging, or prosecution of an individual for any other violation

1 of the laws of this state, or be grounds for suppression of
2 evidence in the prosecution of any other criminal charges.

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4 **to marihuana is subject to the marihuana violation sentence**
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8 limited to, extreme physical illness, decreased level of
9 consciousness, respiratory depression, coma, mania, or death, that
10 is the result of consumption or use of a controlled substance or a
11 controlled substance analogue or a substance with which the
12 controlled substance or controlled substance analogue was combined,
13 or that a layperson would reasonably believe to be a drug overdose
14 that requires medical assistance.

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

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No. 262 of the 100th Legislature is enacted into
21 law.