

Act No. 38
Public Acts of 1994
Approved by the Governor
March 11, 1994
Filed with the Secretary of State
March 11, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators Schwarz, Koivisto, Cisky, Welborn Emmons Arthurhultz Geake, Bouchard and DiNello

ENROLLED SENATE BILL No. 220

AN ACT to amend sections 7104 7204 7401 7402 7403 and 7404 of Act No 368 of the Public Acts of 1978 entitled as amended An act to protect and promote the public health to codify revise consolidate classify and add to the laws relating to public health to provide for the prevention and control of diseases and disabilities to provide for the classification administration regulation financing and maintenance of personal environmental and other health services and activities to create or continue and prescribe the powers and duties of departments boards commissions councils committees task forces and other agencies to prescribe the powers and duties of governmental entities and officials to regulate occupations facilities and agencies affecting the public health to regulate health maintenance organizations and certain third party administrators and insurers to promote the efficient and economical delivery of health care services to provide for the appropriate utilization of health care facilities and services and to provide for the closure of hospitals or consolidation of hospitals or services to provide for the collection and use of data and information to provide for the transfer of property to provide certain immunity from liability to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances to provide for penalties and remedies to provide for sanctions for violations of this act and local ordinances to repeal certain acts and parts of acts to repeal certain parts of this act and to repeal certain parts of this act on specific dates section 7104 as amended by Act No 80 of the Public Acts of 1993 sections 7401 and 7403 as amended by Act No 143 of the Public Acts of 1989 and section 7402 as amended by Act No 60 of the Public Acts of 1988 being sections 333 7104 333 7204 333 7401 333 7402 333 7403 and 333 7404 of the Michigan Compiled Laws and to add section 17766c

The People of the State of Michigan enact

Section 1 Sections 7104 7204 7401 7402 7403 and 7404 of Act No 368 of the Public Acts of 1978 section 7104 as amended by Act No 80 of the Public Acts of 1993 sections 7401 and 7403 as amended by Act No 143 of the Public Acts of 1989 and section 7402 as amended by Act No 60 of the Public Acts of 1988 being sections 333 7104 333 7204 333 7401 333 7402 333 7403 and 333 7404 of the Michigan Compiled Laws are amended and section 17766c is added to read as follows

Sec 7104 (1) Bureau means the drug enforcement administration United States department of justice or its successor agency

(2) Controlled substance means a drug substance or immediate precursor included in schedules 1 to 5 of part 72

(3) Controlled substance analogue means a substance the chemical structure of which is substantially similar to that of a controlled substance in schedule 1 or 2 and that has a narcotic stimulant depressant or hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic stimulant depressant or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2 or with respect to a particular individual that the individual represents or intends to have a narcotic, stimulant depressant or

hallucinogenic effect on the central nervous system substantially similar to or greater than the narcotic stimulant depressant or hallucinogenic effect on the central nervous system of a controlled substance included in schedule 1 or 2 Controlled substance analogue does not include any of the following

(a) A controlled substance

(b) A substance for which there is an approved new drug application

(c) A substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food drug and cosmetic act chapter 675 52 Stat 1040 21 U S C 355 to the extent conduct with respect to the substance is pursuant to the exemption

(d) Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance

(4) Counterfeit prescription form means a printed form that is the same or similar to a prescription form or an official prescription form and that was manufactured printed duplicated forged or altered without the knowledge or permission of a licensed prescribing practitioner or in the case of official prescription forms the department of commerce

(5) Counterfeit substance means a controlled substance which or the container or labeling of which without authorization bears the trademark trade name or other identifying mark imprint number or device or any likeness thereof of a manufacturer distributor or dispenser other than the person who in fact manufactured distributed or dispensed the substance

(6) Deleterious drug means a drug other than a proprietary medicine likely to be destructive to adult human life in quantities of 3 88 grams or less

Sec 7204 If a substance is designated rescheduled or deleted as a controlled substance under federal law and notice of that designation rescheduling or deletion is given to the administrator the administrator shall hold a board meeting within the expiration of 91 days after notice is received to determine whether the substance should be similarly controlled pursuant to section 7201 If the administrator decides not to similarly control the substance the administrator shall within 91 days after that decision is made publish the reasons for that determination

Sec 7401 (1) Except as authorized by this article a person shall not manufacture create deliver or possess with intent to manufacture create or deliver a controlled substance a prescription form an official prescription form or a counterfeit prescription form A practitioner licensed by the administrator under this article shall not dispense prescribe or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner licensee or applicant

(2) A person who violates this section as to

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

(i) Which is in an amount of 650 grams or more of any mixture containing that substance is guilty of a felony and shall be imprisoned for life

(ii) Which is in an amount of 225 grams or more but less than 650 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 20 years nor more than 30 years

(iii) Which is in an amount of 50 grams or more but less than 225 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 10 years nor more than 20 years

(iv) Which is in an amount less than 50 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 1 year nor more than 20 years and may be fined not more than \$25 000 00 or placed on probation for life

(b) Any other controlled substances classified in schedule 1 2 or 3 except marihuana is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$10 000 00 or both

(c) A substance classified in schedule 4 or marihuana is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2 000 00 or both

(d) A substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2 000 00 or both

(e) An official prescription form or a counterfeit official prescription form is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$25 000 00 or both

(f) A prescription form or a counterfeit prescription form other than an official prescription form or a counterfeit official prescription form is guilty of a felony punishable by imprisonment for not more than 7 years or a fine of not more than \$5 000 00 or both

(3) A term of imprisonment imposed pursuant to subsection (2)(a) or section 7403(2)(a)(i) (ii) (iii) or (iv) shall be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony An individual subject to a mandatory term of imprisonment under subsection (2)(a) or section 7403(2)(a)(i) (ii) (iii) or (iv)

shall not be eligible for probation suspension of that sentence or parole during that mandatory term except and only to the extent that those provisions permit probation for life and shall not receive a reduction in that mandatory term of imprisonment by disciplinary credits or any other type of sentence credit reduction

(4) The court may depart from the minimum term of imprisonment authorized under subsection (2)(a)(ii) (iii) or (iv) if the court finds on the record that there are substantial and compelling reasons to do so

Sec 7402 (1) Except as authorized by this article a person shall not create manufacture deliver or possess with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption This section does not apply to a person who manufactures or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the federal food drug and cosmetic act 21 U S C 355 For purposes of this section section 505 of the federal food drug and cosmetic act shall be applicable to the introduction or delivery for introduction of any new drug into intrastate interstate or foreign commerce

(2) A person who violates this section as to

(a) A counterfeit substance classified in schedule 1 or 2 which is either a narcotic drug or described in section 7214(a)(iv) is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10 000 00 or both

(b) Any other counterfeit substance classified in schedule 1 2 or 3 is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5 000 00 or both

(c) A counterfeit substance classified in schedule 4 is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2 000 00 or both

(d) A counterfeit substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2 000 00 or both

(e) A controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$250 000 00 or both

Sec 7403 (1) A person shall not knowingly or intentionally possess a controlled substance a controlled substance analogue or an official prescription form or a prescription form unless the controlled substance controlled substance analogue official prescription form or prescription form was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice or except as otherwise authorized by this article

(2) A person who violates this section as to

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

(i) Which is in an amount of 650 grams or more of any mixture containing that substance is guilty of a felony and shall be imprisoned for life

(ii) Which is in an amount of 225 grams or more but less than 650 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 20 years nor more than 30 years

(iii) Which is in an amount of 50 grams or more but less than 225 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 10 years nor more than 20 years

(iv) Which is in an amount of 25 grams or more but less than 50 grams of any mixture containing that substance is guilty of a felony and shall be imprisoned for not less than 1 year and not more than 4 years and may be fined not more than \$25 000 00 or placed on probation for life

(v) Which is in an amount less than 25 grams of any mixture containing that substance is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$25 000 00 or both

(b) A controlled substance classified in schedule 1 2 3 or 4 except a controlled substance for which a penalty is prescribed in subdivision (a) (c) or (d) or a controlled substance analogue is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2 000 00 or both

(c) Lysergic acid diethylamide peyote mescaline dimethyltryptamine psilocyn psilocybin or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1 000 00 or both

(d) Marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1 000 00 or both

(e) An official prescription form is guilty of a felony punishable by imprisonment for not more than 1 year or a fine of not more than \$2 000 00 or both

(f) A prescription form other than an official prescription form is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1 000 00 or both

(3) The court may depart from the minimum term of imprisonment authorized under subsection (2)(A)(u) (v) or (w) if the court finds on the record that there are substantial and compelling reasons to do so

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

(2) A person who violates this section as to

(a) A controlled substance classified in schedule 1 or 2 is a narcotic drug or a drug described in section 7214(a)(v) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2 000 00 or both

(b) A controlled substance classified in schedule 1 2 3 or 4 except a controlled substance for which a penalty is prescribed in subdivision (a) (c) or (d) or a controlled substance analogue is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1 000 00 or both

(c) Lysergic acid diethylamide peyote mescaline dimethyltryptamine psilocyn psilocybin or a controlled substance classified in schedule 5 is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$500 00 or both

(d) Marihuana is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 00 or both

Sec 17766c (1) A person shall not possess more than 10 grams of ephedrine alone or in a mixture

(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2 000 00 or both

(3) This section does not apply to any of the following

(a) A person who possesses ephedrine pursuant to a license issued by this state or the United States to manufacture deliver dispense possess with intent to manufacture or deliver or possess a controlled substance prescription drug or other drug

(b) An individual who possesses ephedrine pursuant to a prescription

(c) A person who possesses ephedrine for retail sale pursuant to a license issued pursuant to the general sales tax act Act No 167 of the Public Acts of 1933 being sections 205 51 to 205 78 of the Michigan Compiled Laws

(d) A person who possesses ephedrine in the course of his or her business of selling or transporting ephedrine to a person described in subdivision (a) or (c)

(e) A person who in the course of his or her business stores ephedrine for sale or distribution to a person described in subdivision (a) (c) or (d)

Section 2 This amendatory act shall take effect June 1 1994

This act is ordered to take immediate effect

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor