

Act No. 221
Public Acts of 1994
Approved by the Governor
June 26, 1994
Filed with the Secretary of State
June 27, 1994

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

Introduced by Senators Bouchard Welborn and DiNello

ENROLLED SENATE BILL No. 234

AN ACT to amend sections 7304 7401 and 7403 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 sections 7401 and 7403 as amended by Act No 143 of the Public Acts of 1989 being sections 333 7304 333 7401 and 333 7403 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Sections 7304 7401 and 7403 of Act No 368 of the Public Acts of 1978 sections 7401 and 7403 as amended by Act No 143 of the Public Acts of 1989 being sections 333 7304 333 7401 and 333 7403 of the Michigan Compiled Laws are amended to read as follows

Sec 7304 (1) The requirement of licensure is waived for the following persons in the circumstances described in this section

- (a) An officer or employee of the drug enforcement administration while engaged in the course of official duties
- (b) An officer of the United States customs service while engaged in the course of official duties
- (c) An officer or employee of the United States food and drug administration while engaged in the course of official duties
- (d) A federal officer who is lawfully engaged in the enforcement of a federal law relating to controlled substances drugs or customs and who is authorized to possess controlled substances in the course of that person's official duties
- (e) An officer or employee of this state or a political subdivision or agency of this state who is engaged in the enforcement of a state or local law relating to controlled substances and who is authorized to possess controlled substances in the course of that person's official duties

(2) An official exempted from licensure by this section when acting in the course of that person's official duties may possess a controlled substance and may transfer a controlled substance to any other official who is exempted and who is acting in the course of that person's official duties

(3) An official exempted by this section may procure a controlled substance in the course of an administrative inspection or investigation or in the course of a criminal investigation involving the person from whom the substance was procured

(4) A law enforcement officer exempted by this section may distribute a controlled substance to another person in the course of that officer's official duties as a means to detect criminal activity or to conduct a criminal investigation

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 substance 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 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) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows

(i) If the amount is 45 kilograms or more or 200 plants or more by imprisonment for not more than 15 years or a fine of not more than \$10 000 000 00 or both

(ii) If the amount is 5 kilograms or more but less than 45 kilograms or 20 plants or more but fewer than 200 plants by imprisonment for not more than 7 years or a fine of not more than \$500 000 00 or both

(iii) If the amount is less than 5 kilograms or fewer than 20 plants by imprisonment for not more than 4 years or a fine of not more than \$20 000 00 or both

(e) 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

(f) 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

(g) 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

(5) As used in this section plant means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons

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)(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 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 \$2 000 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 \$2 000 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)(i) (iii) or (iv) if the court finds on the record that there are substantial and compelling reasons to do so

Section 2 This amendatory act shall take effect June 1 1994

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor