

**SUBSTITUTE FOR  
HOUSE BILL NO. 5178**

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending sections 7401, 7403, 7453, and 7457 (MCL 333.7401,  
333.7403, 333.7453, and 333.7457), section 7401 as amended by 2016  
PA 548, section 7403 as amended by 2016 PA 307, section 7453 as  
amended by 2024 PA 18, and section 7457 as amended by 2006 PA 458,  
and by adding section 5137.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1        **Sec. 5137. (1) A person that receives authorization from the**  
2        **department or a local government agency may establish a needle and**  
3        **hypodermic syringe access program for the purposes of distributing**  
4        **sterile needles or hypodermic syringes to individuals or providing**  
5        **additional services, items, or equipment to individuals to decrease**



1 the spread of communicable diseases.

2 (2) The department may promulgate rules to implement  
3 subsection (1), including, but not limited to, rules on  
4 requirements for obtaining an authorization to establish and  
5 implement a program.

6 (3) An individual is participating in a program if the  
7 individual is served by a program or the individual is acting as an  
8 employee or volunteer for the program. An individual who  
9 participates in a program established under this section is not in  
10 violation of section 7401 or 7403 or under a local ordinance  
11 substantially corresponding to section 7401 or 7403, or a local  
12 ordinance that provides criminal penalties for the possession of  
13 drug paraphernalia, for the possession, distribution, or delivery  
14 of any of the following:

15 (a) A needle or hypodermic syringe, including a needle or  
16 hypodermic syringe that is empty or has not yet been used, or drug  
17 paraphernalia.

18 (b) A controlled substance or xylazine for illicit use that is  
19 contained in a used needle, used hypodermic syringe, or used drug  
20 paraphernalia, if the amount of the controlled substance or  
21 xylazine for illicit use contained in the needle, syringe, or drug  
22 paraphernalia is in a trace or residual amount.

23 (c) Drug testing equipment, including, but not limited to, a  
24 test strip or reagent.

25 (4) Participation in a program established under this section  
26 may be established through any evidence that is otherwise  
27 admissible, including, but not limited to, either of the following:

28 (a) Testimony from a third party regarding the individual's  
29 participation in a program.



(b) A program card or sign-in sheet.

(5) As used in this section:

(a) "Controlled substance" means that term as defined in section 7104.

(b) "Drug paraphernalia" means that term as defined in section 7451.

(c) "Local government agency" means a local health officer or a local health department or other governmental entity.

(d) "Needle and hypodermic syringe access program" or "program" means a program established under subsection (1).

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, **xylazine for illicit use**, a 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. **A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer xylazine for a use other than a licit use of xylazine 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)(iv) and:

(i) Which is in an amount of 1,000 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more



1 than \$1,000,000.00, or both.

2 (ii) Which is in an amount of 450 grams or more, but less than  
3 1,000 grams, of any mixture containing that substance is guilty of  
4 a felony and punishable by imprisonment for not more than 30 years  
5 or a fine of not more than \$500,000.00, or both.

6 (iii) Which is in an amount of 50 grams or more, but less than  
7 450 grams, of any mixture containing that substance is guilty of a  
8 felony punishable by imprisonment for not more than 20 years or a  
9 fine of not more than \$250,000.00, or both.

10 (iv) Which is in an amount less than 50 grams, of any mixture  
11 containing that substance is guilty of a felony punishable by  
12 imprisonment for not more than 20 years or a fine of not more than  
13 \$25,000.00, or both.

14 (b) Either of the following:

15 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)  
16 is guilty of a felony punishable by imprisonment for not more than  
17 20 years or a fine of not more than \$25,000.00, or both.

18 (ii) Any other controlled substance classified in schedule 1,  
19 2, or 3, except marihuana or a substance listed in section  
20 7212(1)(d), is guilty of a felony punishable by imprisonment for  
21 not more than 7 years or a fine of not more than \$10,000.00, or  
22 both.

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

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

29 (i) If the amount is 45 kilograms or more, or 200 plants or



1 more, by imprisonment for not more than 15 years or a fine of not  
2 more than \$10,000,000.00, or both.

3 (ii) If the amount is 5 kilograms or more but less than 45  
4 kilograms, or 20 plants or more but fewer than 200 plants, by  
5 imprisonment for not more than 7 years or a fine of not more than  
6 \$500,000.00, or both.

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

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

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

16 **(g) Xylazine is guilty of a felony punishable by imprisonment**  
17 **for not more than 5 years or a fine of not more than \$15,000.00, or**  
18 **both.**

19 (3) A term of imprisonment imposed under subsection (2)(a) may  
20 be imposed to run consecutively with any term of imprisonment  
21 imposed for the commission of another felony.

22 (4) If an individual was sentenced to lifetime probation under  
23 subsection (2)(a)(iv) as it existed before March 1, 2003 and the  
24 individual has served 5 or more years of that probationary period,  
25 the probation officer for that individual may recommend to the  
26 court that the court discharge the individual from probation. If an  
27 individual's probation officer does not recommend discharge as  
28 provided in this subsection, with notice to the prosecutor, the  
29 individual may petition the court seeking resentencing under the



1 court rules. The court may discharge an individual from probation  
2 as provided in this subsection. An individual may file more than 1  
3 motion seeking resentencing under this subsection.

4 **(5) An individual who meets the requirements of section**  
5 **5137(3) is not in violation of this section.**

6 **(6) ~~(5)~~**As used in this section, "plant" means a marihuana  
7 plant that has produced cotyledons or a cutting of a marihuana  
8 plant that has produced cotyledons.

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

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 (f) **Xylazine is guilty of a felony punishable by imprisonment**  
5 **for not more than 5 years or a fine of not more than \$15,000.00, or**  
6 **both.**

7 (3) The following individuals are not in violation of this  
8 section:

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

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





1 a health facility or agency.

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

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

18 **(6) An individual who meets the requirements of section**  
 19 **5137(3) is not in violation of this section.**

20 **(7)** ~~(6)~~—If an individual was sentenced to lifetime probation  
 21 under subsection (2)(a)(iv) as it existed before March 1, 2003 and  
 22 the individual has served 5 or more years of that probationary  
 23 period, the probation officer for that individual may recommend to  
 24 the court that the court discharge the individual from probation.  
 25 If an individual's probation officer does not recommend discharge  
 26 as provided in this subsection, with notice to the prosecutor, the  
 27 individual may petition the court seeking resentencing under the  
 28 court rules. The court may discharge an individual from probation  
 29 as provided in this subsection. An individual may file more than 1



1 motion seeking resentencing under this subsection.

2 (8) ~~(7)~~—As used in this section:

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

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

15 Sec. 7453. (1) Subject to ~~subsection~~ **subsections** (2) **and (4)**,  
16 a person shall not sell or offer for sale an object specifically  
17 designed for inhaling nitrous oxide for recreational purposes or  
18 drug paraphernalia, knowing that the object specifically designed  
19 for inhaling nitrous oxide for recreational purposes will be used  
20 to inhale nitrous oxide for recreational purposes or that the drug  
21 paraphernalia will be used to plant, propagate, cultivate, grow,  
22 harvest, manufacture, compound, convert, produce, process, prepare,  
23 test, analyze, pack, repack, store, contain, conceal, inject,  
24 ingest, inhale, or otherwise introduce into the human body a  
25 controlled substance **or xylazine**.

26 (2) Before a person is arrested for a violation of subsection  
27 (1), the attorney general or a prosecuting attorney shall notify  
28 the person in writing, not less than 2 business days before the  
29 person is to be arrested, that the person is in possession of



specific, defined material that has been determined by the attorney general or prosecuting attorney to be an object specifically designed for inhaling nitrous oxide for recreational purposes or drug paraphernalia. The notice also must request that the person refrain from selling or offering for sale the material and must state that if the person complies with the notice, no arrest will be made for a violation of subsection (1).

(3) If a person complies with a notice sent under subsection (2), the compliance is a complete defense in a prosecution under this section, as long as the compliance continues.

**(4) A health professional who is licensed, registered, or otherwise authorized to engage in the practice of a health profession under article 15, who sells or offers for sale drug paraphernalia in the health professional's professional capacity is not in violation of this section.**

Sec. 7457. Sections 7451 to 7455 do not apply to any of the following:

(a) An object sold or offered for sale to a person licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to ~~339.2721~~, **339.2677**, or any intern, trainee, apprentice, or assistant in a profession licensed under article 15 or under the occupational code, 1980 PA 299, MCL 339.101 to ~~339.2721~~, **339.2677**, for use in that profession.

(b) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.

(c) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.



1 (d) A blender, bowl, container, spoon, or mixing device not  
2 specifically designed for a use described in section 7451.

3 (e) A hypodermic syringe or needle sold or offered for sale  
4 for the purpose of injecting or otherwise treating livestock or  
5 other animals.

6 (f) An object ~~sold, offered for sale, or given away~~ **that is**  
7 **provided** by a state or local governmental ~~agency~~ **program** or by a  
8 ~~person specifically authorized by a state or local governmental~~  
9 ~~agency to prevent the transmission of infectious agents.~~ **needle and**  
10 **hypodermic syringe access program created under section 5137.**