

Act No. 319
Public Acts of 1998
Approved by the Governor
July 28, 1998
Filed with the Secretary of State
July 30, 1998
EFFECTIVE DATE: October 1, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

**Introduced by Reps. Banks, Gire, Wallace, Scranton, Schroer, Johnson, Gilmer, Bobier, Cassis, Rhead, Green, Godchaux, Dobb, Willard, Harder, Curtis, Gustafson, Wetters, Middleton, Gagliardi, Owen, Emerson, McBryde, Byl, Birkholz, Fitzgerald, DeVuyst, Jelinek, Raczkowski, Brater, Varga, Hanley, Pitoniak, DeHart, Cherry, Cropsey, Walberg, Crissman, Galloway and Perricone
Reps. Agee, Alley, Anthony, Baird, Basham, Bodem, Brown, Callahan, Ciaramitaro, Dalman, Geiger, Jansen, Jellema, Kelly, Kukuk, LaForge, Leland, Martinez, McNutt, Nye, Profit, Prusi, Rocca, Schauer, Scott, Tesanovich, Vaughn and Voorhees named co-sponsors**

ENROLLED HOUSE BILL No. 4065

AN ACT to amend 1978 PA 368, entitled "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 provide for the imposition of a regulatory fee; 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," by amending sections 7218 and 7401 (MCL 333.7218 and 333.7401), section 7401 as amended by 1996 PA 249, and by adding section 7401a.

The People of the State of Michigan enact:

Sec. 7218. (1) The following controlled substances are included in schedule 4:

(a) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Barbital	Flurazepam
Chloral Betaine	Lorazepam
Chloral Hydrate	Mebutamate
Chlordiazepoxide	Meprobamate
Clonazepam	Methohexital
Clorazepate	Methylphenobarbital
Dextropropoxyphene	Oxazepam
Diazepam	Paraldehyde

Ethchlorvynol
Ethinamate
Flunitrazepam

Petrichloral
Phenobarbital
Prazepam

(b) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with an effect on the central nervous system, including their salts, optical, positional, or geometric isomers, and salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible.

Fenfluramine

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, optical, positional, or geometric isomers, and salts of the isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

Diethylpropion

Phentermine

Pemoline, including organometallic complexes and chelates of pemoline.

(2) The administrator may except by rule any compound, mixture or preparation containing any substance listed in subsection (1) from the application of all or any part of this article if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant or stimulant effect on the central nervous system.

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)(iv) and:

(i) Which is in an amount of 650 grams or more of any mixture containing that substance is guilty of a felony punishable by imprisonment for life or any term of years but not less than 20 years.

(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)(i), (ii), or (iv) if the court finds on the record that there are substantial and compelling reasons to do so. In addition, if any of the following apply, the court may depart from the minimum term of imprisonment authorized under subsection (2)(a)(i), (ii), or (iv) if the individual has not previously been convicted of a felony or an assaultive crime and has not been convicted of another felony or assaultive crime arising from the same transaction as the violation of this section:

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

(b) The person is being sentenced under section 18(1)(n) of chapter XIIA of 1939 PA 288, MCL 712A.18.

(5) As used in this section:

(a) "Assaultive crime" means a violation of chapter XI of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90.

(b) "Plant" means a marihuana plant that has produced cotyledons or a cutting of a marihuana plant that has produced cotyledons.

Sec. 7401a. (1) A person who, without an individual's consent, delivers a controlled substance or causes a controlled substance to be delivered to that individual to commit or attempt to commit a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, against that individual is guilty of a felony punishable by imprisonment for not more than 20 years.

(2) A conviction or sentence under this section does not prohibit a conviction or sentence for any other crime arising out of the same transaction.

(3) This section applies regardless of whether the person is convicted of a violation or attempted violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

Enacting section 1. This amendatory act takes effect October 1, 1998.

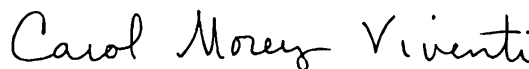
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 826.
- (b) House Bill No. 4444.
- (c) House Bill No. 4445.
- (d) House Bill No. 4446.
- (e) House Bill No. 4515.
- (f) House Bill No. 5398.
- (g) House Bill No. 5419.
- (h) House Bill No. 5876.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.