

Act No. 314
Public Acts of 2000
Approved by the Governor
October 17, 2000
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October 17, 2000
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**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

Introduced by Senators Schwarz, McManus, Young, North, DeBeaussaert, Hammerstrom, Van Regenmorter, Gougeon, Johnson, Bennett, Steil, Gast, Goschka, Shugars, Stille, Byrum, Hart, McCotter, Murphy, Jaye, Rogers, Dunaskiss, Sikkema, Miller, Peters, Vaughn, Leland and A. Smith

ENROLLED SENATE BILL No. 1043

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 the implementation of federal law; 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 7401, 7402, 7403, 7404, 7410a, and 20954 (MCL 333.7401, 333.7402, 333.7403, 333.7404, 333.7410a, and 333.20954), section 7401 as amended by 1998 PA 319, sections 7402 and 7404 as amended by 1994 PA 38, section 7403 as amended by 1996 PA 249, section 7410a as added by 1998 PA 261, and section 20954 as added by 1990 PA 179, and by adding section 7401c.

The People of the State of Michigan enact:

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) Either of the following:

(i) A substance described in section 7214(c)(ii) 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.

(ii) 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 under 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) is not eligible for probation, suspension of that sentence, or parole during that mandatory term, except 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. In addition, if any of the following apply, the court may depart from the minimum term of imprisonment authorized under subsection (2)(a)(ii), (iii), 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 the probate code of 1939, 1939 PA 288, MCL 712A.4.

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

(5) As used in this section:

(a) "Assaultive crime" means a violation of sections 81 to 90 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. 7401c. (1) A person shall not do any of the following:

(a) Own, possess, or use a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(b) Own or possess any chemical or any laboratory equipment that he or she knows or has reason to know is to be used for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(c) Provide any chemical or laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or laboratory equipment for the purpose of manufacturing a controlled substance in violation of section 7401 or a counterfeit substance or a controlled substance analogue in violation of section 7402.

(2) A person who violates this section is guilty of a felony punishable as follows:

(a) Except as provided in subdivisions (b) to (e), by imprisonment for not more than 10 years or a fine of not more than \$100,000.00, or both.

(b) If the violation is committed in the presence of a minor, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(c) If the violation involves the unlawful generation, treatment, storage, or disposal of a hazardous waste, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(d) If the violation occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship, by imprisonment for not more than 20 years or a fine of not more than \$100,000.00, or both.

(e) If the violation involves the possession, placement, or use of a firearm or any other device designed or intended to be used to injure another person, by imprisonment for not more than 25 years or a fine of not more than \$100,000.00, or both.

(3) This section does not apply to a violation involving only a substance described in section 7214(a)(iv) or marihuana, or both.

(4) This section does not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed by that person while violating or attempting to violate this section.

(5) A term of imprisonment imposed under this section may be served consecutively to any other term of imprisonment imposed for a violation of law arising out of the same transaction.

(6) The court may, as a condition of sentence, order a person convicted of a violation punishable under subsection (2)(c) to pay response activity costs arising out of the violation.

(7) As used in this section:

(a) "Hazardous waste" means that term as defined in section 11103 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11103.

(b) "Laboratory equipment" means any equipment, device, or container used or intended to be used in the process of manufacturing a controlled substance, counterfeit substance, or controlled substance analogue.

(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Manufacture does not include any of the following:

(i) The packaging or repackaging of the substance or labeling or relabeling of its container.

(ii) The preparation or compounding of a controlled substance by any of the following:

(A) A practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of his or her professional practice.

(B) A practitioner, or by the practitioner's authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(d) "Minor" means an individual less than 18 years of age.

(e) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

(f) "School property" means that term as defined in section 7410.

(g) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

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) or (c)(ii), 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 except as otherwise provided in this subparagraph. A person convicted of violating this subparagraph may be punished as provided by law by imposing a sentence of imprisonment for any term of years but not less than 25 years if any of the following apply:

(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 the probate code of 1939, 1939 PA 288, MCL 712A.4.

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

(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) Either of the following:

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

(ii) A controlled substance classified in schedule 1, 2, 3, or 4, except a controlled substance for which a penalty is prescribed in subdivision (a), (b)(i), (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) Marihuana, 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)(ii), (iii), 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)(ii), (iii), 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 the probate code of 1939, 1939 PA 288, MCL 712A.4.

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

(4) As used in subsection (3), “assaultive crime” means a violation of sections 81 to 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to 750.90.

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)(iv) or (c)(ii) 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. 7410a. (1) An individual 18 years of age or over who does any of the following may be punished by a term of imprisonment of not more than 2 years:

(a) Violates section 7401(2)(a)(iv) or (2)(b)(i) or section 7401b by delivering a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(b) Violates section 7401(2)(a)(iv) or (2)(b)(i) or section 7401b by possessing with intent to deliver a controlled substance or gamma-butyrolactone to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(c) Violates section 7403(2)(a)(v), (b), (c), or (d) or section 7401b by possessing a controlled substance or gamma-butyrolactone in a public park or private park.

(d) Violates section 7401c within 1,000 feet of a public park or private park.

(2) The term of imprisonment authorized under subsection (1) is in addition to the term of imprisonment authorized for the violation of section 7401(2)(a)(iv) or (2)(b)(i), section 7401b, section 7401c, or section 7403(2)(a)(v), (b), (c), or (d).

(3) As used in this section:

(a) “Private park” means real property owned or maintained by a private individual or entity and that is open to the general public or local residents for recreation or amusement.

(b) “Public park” means real property owned or maintained by this state or a political subdivision of this state that is designated by this state or by that political subdivision as a public park.

Sec. 20954. (1) Upon proper application to the department and payment of the renewal fee under subsection (2), the department may renew a license for a medical first responder, emergency medical technician, emergency medical technician specialist, paramedic, or emergency medical services instructor-coordinator who meets the requirements of this part and completes required ongoing educational programs approved or developed by the department.

(2) Except as otherwise provided in subsection (5), an applicant for renewal of a license under section 20950 shall pay a renewal fee as follows:

(a) Medical first responder - no fee.

(b) Emergency medical technician - \$25.00.

(c) Emergency medical technician specialist - \$25.00.

(d) Paramedic - \$25.00.

(e) Emergency medical services instructor-coordinator - \$50.00.

(3) Except as otherwise provided in subsection (5), if an application for renewal under subsection (1) is received by the department after the date the license expires, the applicant shall pay a late fee in addition to the renewal fee under subsection (2) as follows:

(a) Emergency medical technician - \$50.00.

(b) Emergency medical technician specialist - \$50.00.

(c) Paramedic - \$50.00.

(d) Emergency medical services instructor-coordinator - \$100.00.

(4) A license or registration shall be renewed by the licensee on or before the expiration date as prescribed by rule. The department shall mail a notice to the licensee at the last known address on file with the department advising of the time, procedure, and fee for renewal. Failure of the licensee to receive notice under this subsection does not relieve the licensee of the responsibility for renewing his or her license. A license not renewed by the expiration date may be renewed within 60 days of the expiration date upon application, payment of renewal and late renewal fees, and fulfillment of any continued continuing education requirements set forth in rules promulgated under this article. The licensee may continue to practice and use the title during the 60-day period. If a license is not so renewed within 60 days of the expiration date, the license is void. The licensee shall not practice or use the title. An individual may be relicensed within 3 years of the expiration date upon application, payment of the application processing, renewal, and late renewal fees, and fulfillment of any continuing education requirements in effect at the time of the expiration date, or that would have been required had the individual renewed his or her license pursuant to subsection (1). An individual may be relicensed more than 3 years after the expiration date upon application as a new applicant, meeting all licensure requirements in effect at the time of application, taking or retaking and passing any examinations required for initial licensure, and payment of fees required of new applicants.

(5) If a life support agency certifies to the department that an applicant for renewal under this section is a volunteer and if the life support agency does not charge for its services, the department shall not require the applicant to pay the fee required under subsection (2) or a late fee under subsection (3). If the applicant for renewal ceases to meet the definition of a volunteer under this part at any time during the effective period of his or her license renewal and is employed as a licensee under this part, the applicant for renewal shall at that time pay the fee required under subsection (2).

Enacting section 1. This amendatory act takes effect January 1, 2001.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Ray E. Randall

Clerk of the House of Representatives.

Approved

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Governor.