

# SENATE BILL NO. 631

September 02, 2021, Introduced by Senators IRWIN and HOLLIER and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7401, 7403, and 7404 (MCL 333.7401, 333.7403, and 333.7404), section 7401 as amended by 2016 PA 548, section 7403 as amended by 2016 PA 307, and section 7404 as amended by 2016 PA 308.

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

**1**           Sec. 7401. (1) Except as authorized by this article, a person  
**2** shall not manufacture, create, deliver, or possess with intent to

1 manufacture, create, or deliver a controlled substance, a  
2 prescription form, or a counterfeit prescription form. A  
3 practitioner licensed by the administrator under this article shall  
4 not dispense, prescribe, or administer a controlled substance for  
5 other than legitimate and professionally recognized therapeutic or  
6 scientific purposes or outside the scope of practice of the  
7 practitioner, licensee, or applicant.

8 (2) A person who violates this section as to:

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

11 (i) Which is in an amount of 1,000 grams or more of any mixture  
12 containing that substance is guilty of a felony punishable by  
13 imprisonment for life or any term of years or a fine of not more  
14 than \$1,000,000.00, or both.

15 (ii) Which is in an amount of 450 grams or more, but less than  
16 1,000 grams, of any mixture containing that substance is guilty of  
17 a felony and punishable by imprisonment for not more than 30 years  
18 or a fine of not more than \$500,000.00, or both.

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

23 (iv) Which is in an amount less than 50 grams, of any mixture  
24 containing that substance is guilty of a felony punishable by  
25 imprisonment for not more than 20 years or a fine of not more than  
26 \$25,000.00, or both.

27 (b) Either of the following:

28 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)  
29 is guilty of a felony punishable by imprisonment for not more than

1 20 years or a fine of not more than \$25,000.00, or both.

2 (ii) Any other controlled substance classified in schedule 1,  
3 2, or 3, except marihuana or a substance listed in section  
4 7212(1)(d), is guilty of a felony punishable by imprisonment for  
5 not more than 7 years or a fine of not more than \$10,000.00, or  
6 both.

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

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

13 (i) If the amount is 45 kilograms or more, or 200 **marihuana**  
14 plants or more, by imprisonment for not more than 15 years or a  
15 fine of not more than \$10,000,000.00, or both.

16 (ii) If the amount is 5 kilograms or more but less than 45  
17 kilograms, or 20 **marihuana** plants or more but fewer than 200  
18 **marihuana** plants, by imprisonment for not more than 7 years or a  
19 fine of not more than \$500,000.00, or both.

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

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

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

29 (3) A term of imprisonment imposed under subsection (2)(a) may

1 be imposed to run consecutively with any term of imprisonment  
2 imposed for the commission of another felony.

3 (4) If an individual was sentenced to lifetime probation under  
4 subsection (2) (a) (iv) as it existed before March 1, 2003 and the  
5 individual has served 5 or more years of that probationary period,  
6 the probation officer for that individual may recommend to the  
7 court that the court discharge the individual from probation. If an  
8 individual's probation officer does not recommend discharge as  
9 provided in this subsection, with notice to the prosecutor, the  
10 individual may petition the court seeking resentencing under the  
11 court rules. The court may discharge an individual from probation  
12 as provided in this subsection. An individual may file more than 1  
13 motion seeking resentencing under this subsection.

14 (5) **An individual is not in violation of this section if the**  
15 **individual manufactures, creates, delivers, or possesses with**  
16 **intent to manufacture, create, or deliver an entheogenic plant or**  
17 **fungus without receiving money or other valuable consideration for**  
18 **the entheogenic plant or fungus.**

19 (6) ~~(5)~~—As used in this section: ~~,"plant"~~

20 (a) "Entheogenic plant or fungus" means a plant or fungus of  
21 any species in which there is naturally occurring any of the  
22 following substances listed in section 7212(1) (c), including any  
23 mixture or preparation thereof, or any other natural material  
24 containing an indole amine, tryptamine, or phenethylamine compound:

25 (i) Dimethyltryptamine.

26 (ii) Ibogaine.

27 (iii) Mescaline.

28 (iv) Psilocybin.

29 (v) Psilocyn.

1           **(b) "Marihuana plant"** means a marihuana plant that has  
2 produced cotyledons or a cutting of a marihuana plant that has  
3 produced cotyledons.

4           **(c) "Money or other valuable consideration" does not include a**  
5 **reasonable fee for counseling, spiritual guidance, or a related**  
6 **service that is provided in conjunction with the use of an**  
7 **entheogenic plant or fungus under the guidance and supervision of**  
8 **an individual providing the service.**

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.

17           (2) A person who violates this section as to:

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

20           (i) That is in an amount of 1,000 grams or more of any mixture  
21 containing that substance is guilty of a felony punishable by  
22 imprisonment for life or any term of years or a fine of not more  
23 than \$1,000,000.00, or both.

24           (ii) That is in an amount of 450 grams or more, but less than  
25 1,000 grams, of any mixture containing that substance is guilty of  
26 a felony punishable by imprisonment for not more than 30 years or a  
27 fine of not more than \$500,000.00, or both.

28           (iii) That is in an amount of 50 grams or more, but less than  
29 450 grams, of any mixture containing that substance is guilty of a

1 felony punishable by imprisonment for not more than 20 years or a  
2 fine of not more than \$250,000.00, or both.

3 (iv) That is in an amount of 25 grams or more, but less than 50  
4 grams of any mixture containing that substance is guilty of a  
5 felony punishable by imprisonment for not more than 4 years or a  
6 fine of not more than \$25,000.00, or both.

7 (v) That is in an amount less than 25 grams of any mixture  
8 containing that substance is guilty of a felony punishable by  
9 imprisonment for not more than 4 years or a fine of not more than  
10 \$25,000.00, or both.

11 (b) Either of the following:

12 (i) A substance described in section 7212(1)(h) or 7214(c) (ii)  
13 is guilty of a felony punishable by imprisonment for not more than  
14 10 years or a fine of not more than \$15,000.00, or both.

15 (ii) A controlled substance classified in schedule 1, 2, 3, or  
16 4, except a controlled substance for which a penalty is prescribed  
17 in subparagraph (i) or subdivision (a), (c), or (d), or a controlled  
18 substance analogue is guilty of a felony punishable by imprisonment  
19 for not more than 2 years or a fine of not more than \$2,000.00, or  
20 both.

21 (c) Lysergic acid diethylamide, peyote, mescaline,  
22 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
23 classified in schedule 5 is guilty of a misdemeanor punishable by  
24 imprisonment for not more than 1 year or a fine of not more than  
25 \$2,000.00, or both.

26 (d) Marihuana or a substance listed in section 7212(1)(d) is  
27 guilty of a misdemeanor punishable by imprisonment for not more  
28 than 1 year or a fine of not more than \$2,000.00, or both.

29 (e) A prescription form is guilty of a misdemeanor punishable

1 by imprisonment for not more than 1 year or a fine of not more than  
2 \$1,000.00, or both.

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

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

14 (b) An individual who in good faith attempts to procure  
15 medical assistance for another individual or who accompanies  
16 another individual who requires medical assistance for a drug  
17 overdose or other perceived medical emergency arising from the use  
18 of a controlled substance or a controlled substance analogue that  
19 he or she possesses or possessed in an amount sufficient only for  
20 personal use and the evidence of his or her violation of this  
21 section is obtained as a result of the individual's attempting to  
22 procure medical assistance for another individual or as a result of  
23 the individual's accompanying another individual who requires  
24 medical assistance to a health facility or agency.

25 **(c) An individual who possesses an entheogenic plant or**  
26 **fungus.**

27 (4) A health facility or agency shall develop a process for  
28 notification of the parent or parents, guardian, or custodian of a  
29 minor under the age of 18 who is not emancipated under 1968 PA 293,

1 MCL 722.1 to 722.6, and who voluntarily presents himself or  
2 herself, or is presented by another individual if he or she is  
3 incapacitated, to a health facility or agency for emergency medical  
4 treatment as provided in subsection (3). A health facility or  
5 agency shall not provide notification to a parent or parents,  
6 guardian, or custodian under this subsection for nonemergency  
7 treatment without obtaining the minor's consent.

8 (5) The exemption from prosecution under this section provided  
9 in subsection (3) does not prevent the investigation, arrest,  
10 charging, or prosecution of an individual for any other violation  
11 of the laws of this state or be grounds for suppression of evidence  
12 in the prosecution of any other criminal charges.

13 (6) If an individual was sentenced to lifetime probation under  
14 subsection (2) (a) (iv) as it existed before March 1, 2003 and the  
15 individual has served 5 or more years of that probationary period,  
16 the probation officer for that individual may recommend to the  
17 court that the court discharge the individual from probation. If an  
18 individual's probation officer does not recommend discharge as  
19 provided in this subsection, with notice to the prosecutor, the  
20 individual may petition the court seeking resentencing under the  
21 court rules. The court may discharge an individual from probation  
22 as provided in this subsection. An individual may file more than 1  
23 motion seeking resentencing under this subsection.

24 (7) As used in this section:

25 (a) "Drug overdose" means a condition including, but not  
26 limited to, extreme physical illness, decreased level of  
27 consciousness, respiratory depression, coma, mania, or death, that  
28 is the result of consumption or use of a controlled substance or a  
29 controlled substance analogue or a substance with which the



1 controlled substance or controlled substance analogue was combined,  
2 or that a layperson would reasonably believe to be a drug overdose  
3 that requires medical assistance.

4 (b) "Entheogenic plant or fungus" means a plant or fungus of  
5 any species in which there is naturally occurring any of the  
6 following substances listed in section 7212(1)(c), including any  
7 mixture or preparation thereof, or any other natural material  
8 containing an indole amine, tryptamine, or phenethylamine compound:

9 (i) Dimethyltryptamine.

10 (ii) Ibogaine.

11 (iii) Mescaline.

12 (iv) Psilocybin.

13 (v) Psilocyn.

14 (c) ~~(b)~~—"Seeks medical assistance" means reporting a drug  
15 overdose or other medical emergency to law enforcement, the 9-1-1  
16 system, a poison control center, or a medical provider, or  
17 assisting someone in reporting a drug overdose or other medical  
18 emergency.

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

25 (2) A person who violates this section as to:

26 (a) A controlled substance classified in schedule 1 or 2 as a  
27 narcotic drug or a drug described in section 7212(1)(h) or  
28 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by  
29 imprisonment for not more than 1 year or a fine of not more than

1 \$2,000.00, or both.

2 (b) A controlled substance classified in schedule 1, 2, 3, or  
3 4, except a controlled substance for which a penalty is prescribed  
4 in subdivision (a), (c), or (d), or a controlled substance  
5 analogue, is guilty of a misdemeanor punishable by imprisonment for  
6 not more than 1 year or a fine of not more than \$1,000.00, or both.

7 (c) Lysergic acid diethylamide, peyote, mescaline,  
8 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance  
9 classified in schedule 5 is guilty of a misdemeanor punishable by  
10 imprisonment for not more than 6 months or a fine of not more than  
11 \$500.00, or both.

12 (d) Marihuana, ~~eatha edulis, salvia divinorum,~~ **Catha edulis,**  
13 **Salva divinorum,** or a substance described in section 7212(1)(d) or  
14 (i) is guilty of a misdemeanor punishable by imprisonment for not  
15 more than 90 days or a fine of not more than \$100.00, or both.

16 (3) The following individuals are not in violation of this  
17 section:

18 (a) An individual who seeks medical assistance for himself or  
19 herself or who requires medical assistance and is presented for  
20 assistance by another individual if he or she is incapacitated  
21 because of a drug overdose or other perceived medical emergency  
22 arising from the use of a controlled substance or a controlled  
23 substance analogue that he or she possesses or possessed in an  
24 amount sufficient only for personal use and the evidence of his or  
25 her violation of this section is obtained as a result of the  
26 individual's seeking or being presented for medical assistance.

27 (b) An individual who in good faith attempts to procure  
28 medical assistance for another individual or who accompanies  
29 another individual who requires medical assistance for a drug

1 overdose or other perceived medical emergency arising from the use  
2 of a controlled substance or a controlled substance analogue that  
3 he or she possesses or possessed in an amount sufficient only for  
4 personal use and the evidence of his or her violation of this  
5 section is obtained as a result of the individual's attempting to  
6 procure medical assistance for another individual or as a result of  
7 the individual's accompanying another individual who requires  
8 medical assistance to a health facility or agency.

9 **(c) An individual who uses an entheogenic plant or fungus.**

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

20 (5) The exemption from prosecution under this section provided  
21 in subsection (3) does not prevent the investigation, arrest,  
22 charging, or prosecution of an individual for any other violation  
23 of the laws of this state, or be grounds for suppression of  
24 evidence in the prosecution of any other criminal charges.

25 (6) As used in this section:

26 (a) "Drug overdose" means a condition including, but not  
27 limited to, extreme physical illness, decreased level of  
28 consciousness, respiratory depression, coma, mania, or death, that  
29 is the result of consumption or use of a controlled substance or a

1 controlled substance analogue or a substance with which the  
2 controlled substance or controlled substance analogue was combined,  
3 or that a layperson would reasonably believe to be a drug overdose  
4 that requires medical assistance.

5 **(b) "Entheogenic plant or fungus" means a plant or fungus of**  
6 **any species in which there is naturally occurring any of the**  
7 **following substances listed in section 7212(1)(c), including any**  
8 **mixture or preparation thereof, or any other natural material**  
9 **containing an indole amine, tryptamine, or phenethylamine compound:**

10 **(i) Dimethyltryptamine.**

11 **(ii) Ibogaine.**

12 **(iii) Mescaline.**

13 **(iv) Psilocybin.**

14 **(v) Psilocyn.**

15 **(c) ~~(b)~~—"Seeks medical assistance" means reporting a drug**  
16 **overdose or other medical emergency to law enforcement, the 9-1-1**  
17 **system, a poison control center, or a medical provider, or**  
18 **assisting someone in reporting a drug overdose or other medical**  
19 **emergency.**