

HOUSE BILL No. 4843

August 20, 2015, Introduced by Reps. Pscholka, Aaron Miller, Barrett, Sheppard, Glenn, Crawford, Tedder, Schor, Lucido, Forlini, Leutheuser, Webber, Kivela, Victory, Singh, Glardon, Inman, Lyons, Pagel, Canfield, Yonker, Rendon, Heise, LaVoy, Derek Miller, Geiss, Lane, Dianda, Theis, Kosowski and Zemke and referred to the Committee on Criminal Justice.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7403 and 7404 (MCL 333.7403 and 333.7404), as
amended by 2012 PA 183.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7403. (1) A person shall not knowingly or intentionally
2 possess a controlled substance, a controlled substance analogue, or
3 a prescription form unless the controlled substance, controlled
4 substance analogue, or prescription form was obtained directly
5 from, or pursuant to, a valid prescription or order of a
6 practitioner while acting in the course of the practitioner's
7 professional practice, or except as otherwise authorized by this
8 article.

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

10 (a) A controlled substance classified in schedule 1 or 2 that

1 is a narcotic drug or a drug described in section 7214(a) (iv), and:

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

6 (ii) Which is in an amount of 450 grams or more, but less than
7 1,000 grams, of any mixture containing that substance is guilty of
8 a felony punishable by imprisonment for not more than 30 years or a
9 fine of not more than \$500,000.00, or both.

10 (iii) Which is in an amount of 50 grams or more, but less than
11 450 grams, of any mixture containing that substance is guilty of a
12 felony punishable by imprisonment for not more than 20 years or a
13 fine of not more than \$250,000.00, or both.

14 (iv) Which is in an amount of 25 grams or more, but less than
15 50 grams of any mixture containing that substance is guilty of a
16 felony punishable by imprisonment for not more than 4 years or a
17 fine of not more than \$25,000.00, or both.

18 (v) Which is in an amount less than 25 grams of any mixture
19 containing that substance is guilty of a felony punishable by
20 imprisonment for not more than 4 years or a fine of not more than
21 \$25,000.00, or both.

22 (b) Either of the following:

23 (i) A substance described in section 7212(1) (h) or 7214(c) (ii)
24 is guilty of a felony punishable by imprisonment for not more than
25 10 years or a fine of not more than \$15,000.00, or both.

26 (ii) A controlled substance classified in schedule 1, 2, 3, or
27 4, except a controlled substance for which a penalty is prescribed

1 in **SUBPARAGRAPH (i) OR** subdivision (a), ~~(b) (i)~~, (c), or (d), or a
2 controlled substance analogue is guilty of a felony punishable by
3 imprisonment for not more than 2 years or a fine of not more than
4 \$2,000.00, or both.

5 (c) Lysergic acid diethylamide, peyote, mescaline,
6 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
7 classified in schedule 5 is guilty of a misdemeanor punishable by
8 imprisonment for not more than 1 year or a fine of not more than
9 \$2,000.00, or both.

10 (d) Marihuana is guilty of a misdemeanor punishable by
11 imprisonment for not more than 1 year or a fine of not more than
12 \$2,000.00, or both.

13 (e) A prescription form is guilty of a misdemeanor punishable
14 by imprisonment for not more than 1 year or a fine of not more than
15 \$1,000.00, or both.

16 **(3) THE FOLLOWING INDIVIDUALS ARE NOT IN VIOLATION OF THIS**
17 **SECTION:**

18 **(A) AN INDIVIDUAL WHO IS LESS THAN 21 YEARS OF AGE AND WHO**
19 **SEEKS MEDICAL ASSISTANCE FOR HIMSELF OR HERSELF OR WHO REQUIRES**
20 **MEDICAL ASSISTANCE AND IS PRESENTED FOR ASSISTANCE BY ANOTHER**
21 **INDIVIDUAL IF HE OR SHE IS INCAPACITATED BECAUSE OF A DRUG OVERDOSE**
22 **OR OTHER PERCEIVED MEDICAL EMERGENCY ARISING FROM THE USE OF A**
23 **PRESCRIPTION DRUG THAT IS A CONTROLLED SUBSTANCE OR A PRESCRIPTION**
24 **DRUG THAT IS A CONTROLLED SUBSTANCE ANALOGUE THAT HE OR SHE**
25 **POSSESSES OR POSSESSED IN AN AMOUNT SUFFICIENT ONLY FOR PERSONAL**
26 **USE AND THE EVIDENCE OF HIS OR HER VIOLATION OF THIS SECTION IS**
27 **OBTAINED AS A RESULT OF THE INDIVIDUAL'S SEEKING OR BEING PRESENTED**

1 FOR MEDICAL ASSISTANCE.

2 (B) AN INDIVIDUAL WHO IS LESS THAN 21 YEARS OF AGE AND WHO IN
3 GOOD FAITH ATTEMPTS TO PROCURE MEDICAL ASSISTANCE FOR ANOTHER
4 INDIVIDUAL OR WHO ACCOMPANIES ANOTHER INDIVIDUAL WHO REQUIRES
5 MEDICAL ASSISTANCE FOR A DRUG OVERDOSE OR OTHER PERCEIVED MEDICAL
6 EMERGENCY ARISING FROM THE USE OF A PRESCRIPTION DRUG THAT IS A
7 CONTROLLED SUBSTANCE OR A PRESCRIPTION DRUG THAT IS A CONTROLLED
8 SUBSTANCE ANALOGUE THAT HE OR SHE POSSESSES OR POSSESSED IN AN
9 AMOUNT SUFFICIENT ONLY FOR PERSONAL USE AND THE EVIDENCE OF HIS OR
10 HER VIOLATION OF THIS SECTION IS OBTAINED AS A RESULT OF THE
11 INDIVIDUAL'S ATTEMPTING TO PROCURE MEDICAL ASSISTANCE FOR ANOTHER
12 INDIVIDUAL OR AS A RESULT OF THE INDIVIDUAL'S ACCOMPANYING ANOTHER
13 INDIVIDUAL WHO REQUIRES MEDICAL ASSISTANCE TO A HEALTH FACILITY OR
14 AGENCY.

15 (4) A HEALTH FACILITY OR AGENCY SHALL DEVELOP A PROCESS FOR
16 NOTIFICATION OF THE PARENT OR PARENTS, GUARDIAN, OR CUSTODIAN OF A
17 MINOR UNDER THE AGE OF 18 WHO IS NOT EMANCIPATED UNDER 1968 PA 293,
18 MCL 722.1 TO 722.6, AND WHO VOLUNTARILY PRESENTS HIMSELF OR
19 HERSELF, OR IS PRESENTED BY ANOTHER INDIVIDUAL IF HE OR SHE IS
20 INCAPACITATED, TO A HEALTH FACILITY OR AGENCY FOR EMERGENCY MEDICAL
21 TREATMENT AS PROVIDED IN SUBSECTION (3). A HEALTH FACILITY OR
22 AGENCY SHALL NOT PROVIDE NOTIFICATION TO A PARENT OR PARENTS,
23 GUARDIAN, OR CUSTODIAN UNDER THIS SUBSECTION FOR NONEMERGENCY
24 TREATMENT WITHOUT OBTAINING THE MINOR'S CONSENT.

25 (5) THE EXEMPTION FROM PROSECUTION UNDER THIS SECTION PROVIDED
26 IN SUBSECTION (3) SHALL NOT PREVENT THE INVESTIGATION, ARREST,
27 CHARGING, OR PROSECUTION OF AN INDIVIDUAL FOR ANY OTHER VIOLATION

1 OF THE LAWS OF THIS STATE OR BE GROUNDS FOR SUPPRESSION OF EVIDENCE
2 IN THE PROSECUTION OF ANY OTHER CRIMINAL CHARGES.

3 (6) ~~(3)~~—If an individual was sentenced to lifetime probation
4 under subsection (2)(a)(iv) as it existed before March 1, 2003 and
5 the individual has served 5 or more years of that probationary
6 period, the probation officer for that individual may recommend to
7 the court that the court discharge the individual from probation.
8 If an individual's probation officer does not recommend discharge
9 as 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 (7) AS USED IN THIS SECTION:

15 (A) "DRUG OVERDOSE" MEANS A CONDITION INCLUDING, BUT NOT
16 LIMITED TO, EXTREME PHYSICAL ILLNESS, DECREASED LEVEL OF
17 CONSCIOUSNESS, RESPIRATORY DEPRESSION, COMA, MANIA, OR DEATH, THAT
18 IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED SUBSTANCE OR A
19 CONTROLLED SUBSTANCE ANALOGUE OR A SUBSTANCE WITH WHICH THE
20 CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE WAS COMBINED,
21 OR THAT A LAYPERSON WOULD REASONABLY BELIEVE TO BE A DRUG OVERDOSE
22 THAT REQUIRES MEDICAL ASSISTANCE.

23 (B) "SEEKS MEDICAL ASSISTANCE" INCLUDES, BUT IS NOT LIMITED
24 TO, REPORTING A DRUG OVERDOSE OR OTHER MEDICAL EMERGENCY TO LAW
25 ENFORCEMENT, THE 9-1-1 SYSTEM, A POISON CONTROL CENTER, OR A
26 MEDICAL PROVIDER, OR ASSISTING SOMEONE IN REPORTING A DRUG OVERDOSE
27 OR OTHER MEDICAL EMERGENCY.

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

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

8 (a) A controlled substance classified in schedule 1 or 2 as a
9 narcotic drug or a drug described in section 7212(1)(h) or
10 7214(a)(iv) or (c)(ii) is guilty of a misdemeanor punishable by
11 imprisonment for not more than 1 year or a fine of not more than
12 \$2,000.00, or both.

13 (b) A controlled substance classified in schedule 1, 2, 3, or
14 4, except a controlled substance for which a penalty is prescribed
15 in subdivision (a), (c), or (d), or a controlled substance
16 analogue, is guilty of a misdemeanor punishable by imprisonment for
17 not more than 1 year or a fine of not more than \$1,000.00, or both.

18 (c) Lysergic acid diethylamide, peyote, mescaline,
19 dimethyltryptamine, psilocyn, psilocybin, or a controlled substance
20 classified in schedule 5 is guilty of a misdemeanor punishable by
21 imprisonment for not more than 6 months or a fine of not more than
22 \$500.00, or both.

23 (d) Marihuana, catha edulis, salvia divinorum, or a substance
24 described in section 7212(1)(i) is guilty of a misdemeanor
25 punishable by imprisonment for not more than 90 days or a fine of
26 not more than \$100.00, or both.

27 (3) **THE FOLLOWING INDIVIDUALS ARE NOT IN VIOLATION OF THIS**

1 SECTION:

2 (A) AN INDIVIDUAL WHO IS LESS THAN 21 YEARS OF AGE AND WHO
3 SEEKS MEDICAL ASSISTANCE FOR HIMSELF OR HERSELF OR WHO REQUIRES
4 MEDICAL ASSISTANCE AND IS PRESENTED FOR ASSISTANCE BY ANOTHER
5 INDIVIDUAL IF HE OR SHE IS INCAPACITATED BECAUSE OF A DRUG OVERDOSE
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10 USE AND THE EVIDENCE OF HIS OR HER VIOLATION OF THIS SECTION IS
11 OBTAINED AS A RESULT OF THE INDIVIDUAL'S SEEKING OR BEING PRESENTED
12 FOR MEDICAL ASSISTANCE.

13 (B) AN INDIVIDUAL WHO IS LESS THAN 21 YEARS OF AGE AND WHO IN
14 GOOD FAITH ATTEMPTS TO PROCURE MEDICAL ASSISTANCE FOR ANOTHER
15 INDIVIDUAL OR WHO ACCOMPANIES ANOTHER INDIVIDUAL WHO REQUIRES
16 MEDICAL ASSISTANCE FOR A DRUG OVERDOSE OR OTHER PERCEIVED MEDICAL
17 EMERGENCY ARISING FROM THE USE OF A PRESCRIPTION DRUG THAT IS A
18 CONTROLLED SUBSTANCE OR A PRESCRIPTION DRUG THAT IS A CONTROLLED
19 SUBSTANCE ANALOGUE THAT HE OR SHE POSSESSES OR POSSESSED IN AN
20 AMOUNT SUFFICIENT ONLY FOR PERSONAL USE AND THE EVIDENCE OF HIS OR
21 HER VIOLATION OF THIS SECTION IS OBTAINED AS A RESULT OF THE
22 INDIVIDUAL'S ATTEMPTING TO PROCURE MEDICAL ASSISTANCE FOR ANOTHER
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24 INDIVIDUAL WHO REQUIRES MEDICAL ASSISTANCE TO A HEALTH FACILITY OR
25 AGENCY.

26 (4) A HEALTH FACILITY OR AGENCY SHALL DEVELOP A PROCESS FOR
27 NOTIFICATION OF THE PARENT OR PARENTS, GUARDIAN, OR CUSTODIAN OF A

1 MINOR UNDER THE AGE OF 18 WHO IS NOT EMANCIPATED UNDER 1968 PA 293,
2 MCL 722.1 TO 722.6, AND WHO VOLUNTARILY PRESENTS HIMSELF OR
3 HERSELF, OR IS PRESENTED BY ANOTHER INDIVIDUAL IF HE OR SHE IS
4 INCAPACITATED, TO A HEALTH FACILITY OR AGENCY FOR EMERGENCY MEDICAL
5 TREATMENT AS PROVIDED IN SUBSECTION (3). A HEALTH FACILITY OR
6 AGENCY SHALL NOT PROVIDE NOTIFICATION TO A PARENT OR PARENTS,
7 GUARDIAN, OR CUSTODIAN UNDER THIS SUBSECTION FOR NONEMERGENCY
8 TREATMENT WITHOUT OBTAINING THE MINOR'S CONSENT.

9 (5) THE EXEMPTION FROM PROSECUTION UNDER THIS SECTION PROVIDED
10 IN SUBSECTION (3) SHALL NOT PREVENT THE INVESTIGATION, ARREST,
11 CHARGING, OR PROSECUTION OF AN INDIVIDUAL FOR ANY OTHER VIOLATION
12 OF THE LAWS OF THIS STATE, OR BE GROUNDS FOR SUPPRESSION OF
13 EVIDENCE IN THE PROSECUTION OF ANY OTHER CRIMINAL CHARGES.

14 (6) AS USED IN THIS SECTION:

15 (A) "DRUG OVERDOSE" MEANS A CONDITION INCLUDING, BUT NOT
16 LIMITED TO, EXTREME PHYSICAL ILLNESS, DECREASED LEVEL OF
17 CONSCIOUSNESS, RESPIRATORY DEPRESSION, COMA, MANIA, OR DEATH, THAT
18 IS THE RESULT OF CONSUMPTION OR USE OF A CONTROLLED SUBSTANCE OR A
19 CONTROLLED SUBSTANCE ANALOGUE OR A SUBSTANCE WITH WHICH THE
20 CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE WAS COMBINED,
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24 TO, REPORTING A DRUG OVERDOSE OR OTHER MEDICAL EMERGENCY TO LAW
25 ENFORCEMENT, THE 9-1-1 SYSTEM, A POISON CONTROL CENTER, OR A
26 MEDICAL PROVIDER, OR ASSISTING SOMEONE IN REPORTING A DRUG OVERDOSE
27 OR OTHER MEDICAL EMERGENCY.

1 Enacting section 1. This amendatory act takes effect 90 days
2 after the date it is enacted into law.