

**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.

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

2 (5) As used in this section:

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

5 (b) "Drug paraphernalia" means that term as defined in section
6 7451.

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

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

11 Sec. 7401. (1) Except as authorized by this article, a person
12 shall not manufacture, create, deliver, or possess with intent to
13 manufacture, create, or deliver a controlled substance, **xylazine**
14 **for illicit use**, a prescription form, or a counterfeit prescription
15 form. A practitioner licensed by the administrator under this
16 article shall not dispense, prescribe, or administer a controlled
17 substance for other than legitimate and professionally recognized
18 therapeutic or scientific purposes or outside the scope of practice
19 of the practitioner, licensee, or applicant. **A practitioner**
20 **licensed by the administrator under this article shall not**
21 **dispense, prescribe, or administer xylazine for a use other than a**
22 **licit use of xylazine or outside the scope of practice of the**
23 **practitioner, licensee, or applicant.**

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

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

27 (i) Which is in an amount of 1,000 grams or more of any mixture
28 containing that substance is guilty of a felony punishable by
29 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

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

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

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

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

18 (a) An object sold or offered for sale to a person licensed
19 under article 15 or under the occupational code, 1980 PA 299, MCL
20 339.101 to ~~339.2721~~, **339.2677**, or any intern, trainee, apprentice,
21 or assistant in a profession licensed under article 15 or under the
22 occupational code, 1980 PA 299, MCL 339.101 to ~~339.2721~~, **339.2677**,
23 for use in that profession.

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

28 (c) An object sold or offered for sale to a dealer in medical,
29 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.**