

Act No. 236
Public Acts of 2001
Approved by the Governor
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Senators Shugars and Hammerstrom

ENROLLED SENATE BILL No. 827

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, 7403, 7407, and 7521 (MCL 333.7401, 333.7403, 333.7407, and 333.7521), sections 7401 and 7403 as amended by 2000 PA 314, section 7407 as amended by 1993 PA 80, and section 7521 as amended by 2000 PA 302; and to repeal acts and parts of acts.

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, 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) A prescription form or a counterfeit 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. 7403. (1) A person shall not knowingly or intentionally possess a controlled substance, a controlled substance analogue, or a prescription form unless the controlled substance, controlled substance analogue, 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) Marijuana 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) A 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. 7407. (1) A person shall not knowingly or intentionally:

(a) Distribute as a licensee a controlled substance classified in schedule 1 or 2, except pursuant to an order form as required by section 7331.

(b) Use in the course of the manufacture or distribution of a controlled substance a license number that is fictitious, revoked, suspended, or issued to another person.

(c) Acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.

(d) Furnish false or fraudulent material information in, or omit any material information from, an application, report, or other document required to be kept or filed under this article, or any record required to be kept by this article.

(e) Make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon a drug or container or labeling thereof so as to render the drug a counterfeit substance.

(f) Possess counterfeit prescription forms, except as an agent of government while engaged in the enforcement of this part.

(2) A person shall not refuse or knowingly fail to make, keep, or furnish any record, notification, order form, statement, invoice, or other information required under this article.

(3) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$30,000.00, or both.

Sec. 7521. (1) The following property is subject to forfeiture:

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

(b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

(c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

(ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.

(g) Any other drug paraphernalia not described in subdivision (b) or (c).

(2) As used in this section, "imitation controlled substance" means that term as defined in section 7341.

Enacting section 1. Section 17766a of the public health code, 1978 PA 368, MCL 333.17766a, is repealed.

Enacting section 2. Sections 7401, 7403, 7407, and 7521 of the public health code, 1978 PA 368, MCL 333.7401, 333.7403, 333.7407, and 333.7521, as amended by this amendatory act, take effect upon the promulgation of the rules required under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and receipt by the secretary of state of written notice from the director of the department of consumer and industry services that the electronic monitoring system required by section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, is operational. The notice to the secretary of state shall include a statement that the department of consumer and industry services is able to receive data from at least 80% of those required to report under section 7333a of the public health code, 1978 PA 368, MCL 333.7333a, and is able to respond to requests for data from persons authorized to make such requests and to review and utilize the data.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 91st Legislature are enacted into law:

(a) House Bill No. 5260.

(b) House Bill No. 5261.

(c) House Bill No. 5262.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

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Governor.