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Senate Bill 1043 (Substitute S-1 as reported)  
Sponsor: Senator John J. H. Schwarz, M.D.  
Committee: Health Policy

## **CONTENT**

The bill would amend the Public Health Code to make it a felony to own or use a building or place, or own or possess chemical or laboratory equipment, in order to manufacture a controlled substance, or a counterfeit substance or controlled substance analogue; and establish penalties for commission of the felony, including enhanced penalties for a violation that involved unlawfully disposing of hazardous waste, using a device intended to injure a person, or committing a violation in the presence of a minor. Further, the bill would make violations involving methamphetamine subject to the same penalties the Code specifies for violations involving cocaine and narcotics.

### **Illegal Manufacturing**

The bill would prohibit a person from doing any of the following:

- Owning, possessing, or using a building, structure, place, or area as a location to manufacture a controlled substance (in violation of Section 7401 of the Code), or a counterfeit substance or a controlled substance analogue (in violation of Section 7402). (Section 7401 prohibits a person from manufacturing, possessing, creating, or delivering a controlled substance. Section 7402 prohibits a person from creating, manufacturing, delivering, or possessing with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption.)
- Owning or possessing any chemical or any laboratory equipment that the person knew or had reason to know was 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).
- Providing any chemical or laboratory equipment to another person knowing or having reason to know that the other person intended to use that 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).

A person who violated any of these provisions would be guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$100,000, or both. The bill also would establish the following penalties:

- If a violation were committed in the presence of a minor, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation involved the unlawful generation, treatment, storage, or disposal of a hazardous waste, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation occurred within 500 feet of a residence, business establishment, school property, or church or other house of worship, imprisonment for up to 20 years, a fine of up to \$100,000, or both.
- If a violation involved the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person, imprisonment for up to 25 years, a fine of up to \$100,000, or both.

The penalties prescribed by the bill would not apply to a violation involving the manufacture of marijuana only, except for a violation that involved the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person.

MCL 333.7401 et al.

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

Senate Bill 1043 would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many people would be convicted of owning, possessing or using a structure or equipment to manufacture controlled substances or how many people would be convicted under the enhanced penalties for the presence of a minor, unlawful disposal of hazardous waste, use of a device intended to injure a person, or the site of the crime. Additionally, the bill would establish the maximum penalties for these offenses, but their fiscal impact is based on the minimum sentence imposed by the judge, because this represents the expected length of incarceration.

In 1997, there were 1,724 prison commitments of offenders convicted of offenses involving the manufacture of a controlled substance. The breakdown of the commitments is shown in Table 1.

Table 1

MCL Section	Offense	Commitments	Average Minimum Sentence
333.7401	Manufacture, Delivery, Possession or Prescription of a Controlled Substance	1,238	2.7
333.7403	Manufacture, Delivery, or Possession of Drugs	469	1.9
333.7341	Manufacturing an imitation of a Controlled Substance	17	1.3

If one assumed that the number of offenders convicted and sentenced to prison for one of these enhanced crimes would be equal to 10% of the 1997 new commitments and that the sentences served were equivalent to two-thirds of the maximum penalty of 20 years, given that the average annual cost of incarceration is \$22,000, costs for incarceration could increase \$51 million annually in the long run. This example does not include the costs of incarceration for an underlying offense. An offender convicted under this offense can be charged under other existing statutes arising from the same crime and these penalties may be served consecutive to other sentences.

Date Completed: 3-30-00

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.