

# HOUSE BILL No. 5556

April 11, 2000, Introduced by Reps. Faunce, Kowall, Van Woerkom, Bradstreet, Garcia, Mortimer, Gilbert, Vander Roest, Bishop, Mead, Pumford, Kukuk, Shulman, Shackleton, Hager, Sanborn, Bisbee, Woronchak, Caul, Ruth Johnson, Rocca, Richner, Frank, Pestka, Rivet, Switalski, Wojno, Gielegem, Jacobs, Cameron Brown, Richardville and Vear and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7401a, 7410, 7410a, and 7521 (MCL 333.7401a, 333.7410, 333.7410a, and 333.7521), section 7401a as added by 1998 PA 319, section 7410 as amended by 1999 PA 188, section 7410a as added by 1998 PA 261, and section 7521 as amended by 1990 PA 30, and by adding section 7401b.

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

1       Sec. 7401a. (1) A person who, without an individual's con-  
2 sent, delivers a controlled substance OR A SUBSTANCE DESCRIBED IN  
3 SECTION 7401B or causes a controlled substance OR A SUBSTANCE  
4 DESCRIBED IN SECTION 7401B to be delivered to that individual to  
5 commit or attempt to commit a violation of section 520b, 520c,  
6 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL  
7 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, against

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1 that individual is guilty of a felony punishable by imprisonment  
2 for not more than 20 years.

3 (2) A conviction or sentence under this section does not  
4 prohibit a conviction or sentence for any other crime arising out  
5 of the same transaction.

6 (3) This section applies regardless of whether the person is  
7 convicted of a violation or attempted violation of section 520b,  
8 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA  
9 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

10 SEC. 7401B. (1) A PERSON SHALL NOT DO ANY OF THE  
11 FOLLOWING:

12 (A) MANUFACTURE, DELIVER, OR POSSESS WITH INTENT TO MANUFAC-  
13 TURE OR DELIVER GAMMA-BUTYROLACTONE OR ANY MATERIAL, COMPOUND,  
14 MIXTURE, OR PREPARATION CONTAINING GAMMA-BUTYROLACTONE.

15 (B) KNOWINGLY OR INTENTIONALLY POSSESS GAMMA-BUTYROLACTONE  
16 OR ANY MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING  
17 GAMMA-BUTYROLACTONE.

18 (2) SUBSECTION (1) DOES NOT PROHIBIT MANUFACTURING, DELIVER-  
19 ING, POSSESSING WITH INTENT TO MANUFACTURE OR DELIVER, OR POS-  
20 SESSING GAMMA-BUTYROLACTONE OR ANY MATERIAL, COMPOUND, MIXTURE,  
21 OR PREPARATION CONTAINING GAMMA-BUTYROLACTONE FOR USE IN A COM-  
22 MERCIAL APPLICATION AND NOT FOR HUMAN CONSUMPTION. IT IS AN  
23 AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT THE  
24 PERSON MANUFACTURED, DELIVERED, POSSESSED WITH INTENT TO MANUFAC-  
25 TURE OR DELIVER, OR POSSESSED GAMMA-BUTYROLACTONE OR THE MATERI-  
26 AL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING  
27 GAMMA-BUTYROLACTONE IN COMPLIANCE WITH THIS SUBSECTION.

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1 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CRIME  
2 AS FOLLOWS:

3 (A) FOR A VIOLATION OF SUBSECTION (1)(A), THE PERSON IS  
4 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 7  
5 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR BOTH.

6 (B) FOR A VIOLATION OF SUBSECTION (1)(B), THE PERSON IS  
7 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2  
8 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.

9 (4) AS USED IN THIS SECTION:

10 (A) "COMMERCIAL APPLICATION" MEANS AS AN INGREDIENT IN A  
11 LAWFUL PRODUCT, FOR USE IN THE PROCESS OF MANUFACTURING A LAWFUL  
12 PRODUCT, OR FOR LAWFUL USE AS A SOLVENT.

13 (B) "DELIVER" MEANS THE ACTUAL, CONSTRUCTIVE, OR ATTEMPTED  
14 TRANSFER FROM 1 PERSON TO ANOTHER OF GAMMA-BUTYROLACTONE OR ANY  
15 MATERIAL, COMPOUND, MIXTURE, OR PREPARATION CONTAINING  
16 GAMMA-BUTYROLACTONE, WHETHER OR NOT THERE IS AN AGENCY  
17 RELATIONSHIP.

18 (C) "MANUFACTURE" MEANS THE PRODUCTION, PREPARATION, PROPA-  
19 GATION, COMPOUNDING, CONVERSION, OR PROCESSING OF  
20 GAMMA-BUTYROLACTONE OR ANY MATERIAL, COMPOUND, MIXTURE, OR PREPA-  
21 RATION CONTAINING GAMMA-BUTYROLACTONE, DIRECTLY OR INDIRECTLY, BY  
22 EXTRACTION FROM SUBSTANCES OF NATURAL ORIGIN OR INDEPENDENTLY BY  
23 MEANS OF CHEMICAL SYNTHESIS, OR BY A COMBINATION OF EXTRACTION  
24 AND CHEMICAL SYNTHESIS. IT INCLUDES THE PACKAGING OR REPACKAGING  
25 OF THE SUBSTANCE OR LABELING OR RELABELING OF ITS CONTAINER.

26 (D) "PERSON" MEANS THAT TERM AS DEFINED IN SECTION 1106 OR A  
27 GOVERNMENTAL ENTITY.

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1       Sec. 7410. (1) Except as otherwise provided in  
2 subsections (2) and (3), an individual 18 years of age or over  
3 who violates section 7401(2)(a)(iv) by delivering or distributing  
4 a controlled substance listed in schedule 1 or 2 that is either a  
5 narcotic drug or described in section 7214(a)(iv) to an individ-  
6 ual under 18 years of age who is at least 3 years the deliverer's  
7 or distributor's junior may be punished by the fine authorized by  
8 section 7401(2)(a)(iv) or by a term of imprisonment of not less  
9 than 1 year nor more than twice that authorized by section  
10 7401(2)(a)(iv), or both. An individual 18 years of age or over  
11 who violates section 7401 OR 7401B by delivering or distributing  
12 any other controlled substance listed in schedules 1 to 5 OR  
13 GAMMA-BUTYROLACTONE to an individual under 18 years of age who is  
14 at least 3 years the distributor's junior may be punished by the  
15 fine authorized by section 7401(2)(b), (c), or (d) OR 7401B, or  
16 by a term of imprisonment not more than twice that authorized by  
17 section 7401(2)(b), (c), or (d) OR 7401B, or both.

18       (2) An individual 18 years of age or over who violates sec-  
19 tion 7401(2)(a)(iv) by delivering a controlled substance  
20 described in schedule 1 or 2 that is either a narcotic drug or  
21 described in section 7214(a)(iv) to another person on or within  
22 1,000 feet of school property shall be punished, subject to sub-  
23 section (5), by a term of imprisonment of not less than 2 years  
24 or more than 3 times that authorized by section 7401(2)(a)(iv)  
25 and, in addition, may be punished by a fine of not more than 3  
26 times that authorized by section 7401(2)(a)(iv).

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1           (3) An individual 18 years of age or over who violates  
2 section 7401(2)(a)(iv) by possessing with intent to deliver to  
3 another person on or within 1,000 feet of school property a con-  
4 trolled substance described in schedule 1 or 2 that is either a  
5 narcotic drug or described in section 7214(a)(iv) shall be pun-  
6 ished, subject to subsection (5), by a term of imprisonment of  
7 not less than 2 years or more than twice that authorized by  
8 section 7401(2)(a)(iv) and, in addition, may be punished by a  
9 fine of not more than 3 times that authorized by section  
10 7401(2)(a)(iv).

11           (4) An individual 18 years of age or over who violates sec-  
12 tion 7401B OR 7403(2)(a)(v), (b), (c), or (d) by possessing  
13 GAMMA-BUTYROLACTONE OR a controlled substance on school property  
14 shall be punished by a term of imprisonment or a fine, or both,  
15 of not more than twice that authorized by section 7401B OR  
16 7403(2)(a)(v), (b), (c), or (d).

17           (5) The court may depart from the minimum term of imprison-  
18 ment authorized under subsection (2) or (3) if the court finds on  
19 the record that there are substantial and compelling reasons to  
20 do so.

21           (6) As used in this section, "school property" means a  
22 building, playing field, or property used for school purposes to  
23 impart instruction to children in grades kindergarten through 12,  
24 when provided by a public, private, denominational, or parochial  
25 school, except those buildings used primarily for adult education  
26 or college extension courses.

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1 (7) A person who distributes marihuana without remuneration  
2 and not to further commercial distribution and who does not  
3 violate subsection (1) is guilty of a misdemeanor punishable by  
4 imprisonment for not more than 1 year or a fine of not more than  
5 \$1,000.00, or both, unless the distribution is in accordance with  
6 the federal law or the law of this state.

7 Sec. 7410a. (1) An individual 18 years of age or over who  
8 does any of the following may be punished by a term of imprison-  
9 ment of not more than 2 years:

10 (a) Violates section 7401(2)(a)(iv) by delivering a con-  
11 trolled substance described in schedule 1 or 2 that is either a  
12 narcotic drug or described in section 7214(a)(iv) OR IS A SUB-  
13 STANCE DESCRIBED IN SECTION 7401B to a minor who is in a public  
14 park or private park or within 1,000 feet of a public park or  
15 private park.

16 (b) Violates section 7401(2)(a)(iv) by possessing with  
17 intent to deliver a controlled substance described in schedule 1  
18 or 2 that is either a narcotic drug or described in section  
19 7214(a)(iv) OR IS A SUBSTANCE DESCRIBED IN SECTION 7401B to a  
20 minor who is in a public park or private park or within 1,000  
21 feet of a public park or private park.

22 (c) Violates section 7403(2)(a)(v), (b), (c), or (d) by pos-  
23 sessing a controlled substance OR A SUBSTANCE DESCRIBED IN SEC-  
24 TION 7401B in a public park or private park.

25 (2) The term of imprisonment authorized under subsection (1)  
26 is in addition to the term of imprisonment authorized for the

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1 violation of section 7401(2)(a)(iv) [, SECTION 7401B,] or section  
2 7403(2)(a)(v),

3 (b), (c), or (d).

4 (3) As used in this section:

5 (a) "Private park" means real property owned or maintained  
6 by a private individual or entity and that is open to the general  
7 public or local residents for recreation or amusement.

8 (b) "Public park" means real property owned or maintained by  
9 this state or a political subdivision of this state that is des-  
10 ignated by this state or by that political subdivision as a  
11 public park.

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

14 (a) A prescription form, official prescription form, con-  
15 trolled substance, an imitation controlled substance, a con-  
16 trolled substance analogue, an androgenic anabolic steroid, ~~or~~  
17 a counterfeit androgenic anabolic steroid, ~~which~~ OR OTHER DRUG  
18 THAT has been manufactured, distributed, dispensed, used, pos-  
19 sessed, or acquired in violation of this article or section  
20 17766a.

21 (b) A raw material, product, or equipment of any kind  
22 ~~which~~ THAT is used, or intended for use, in manufacturing, com-  
23 pounding, processing, delivering, importing, or exporting a con-  
24 trolled substance, a controlled substance analogue, an androgenic  
25 anabolic steroid, ~~or~~ a counterfeit androgenic anabolic steroid,  
26 OR OTHER DRUG in violation of this article or section 17766a; or  
27 a raw material, product, or equipment of any kind ~~which~~ THAT is  
intended for use in manufacturing, compounding, processing,

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2 substance in violation of section 7341.

3 (c) Property ~~which~~ THAT is used, or intended for use, as a  
4 container for property described in subdivision (a) or (b).

5 (d) Except as provided in subparagraphs (i) to (iv), a con-  
6 veyance, including an aircraft, vehicle, or vessel used or  
7 intended for use, to transport, or in any manner to facilitate  
8 the transportation, for the purpose of sale or receipt of prop-  
9 erty described in subdivision (a) or (b):

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

15 (ii) A conveyance is not subject to forfeiture by reason of  
16 any act or omission established by the owner of that conveyance  
17 to have been committed or or omitted without the owner's knowl-  
18 edge or consent.

19 (iii) A conveyance is not subject to forfeiture for a viola-  
20 tion of section 7403(2)(c) or (d), section 7404, or  
21 section 7341(4).

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

1 (e) Books, records, and research products and materials,  
2 including formulas, microfilm, tapes, and data used, or intended



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3 for use, in violation of this article or section 17766a.

4 (f) Any thing of value that is furnished or intended to be  
5 furnished in exchange for a controlled substance, an imitation  
6 controlled substance, an androgenic anabolic steroid, ~~or~~ a  
7 counterfeit androgenic anabolic steroid, OR OTHER DRUG in viola-  
8 tion of this article or section 17766a that is traceable to an  
9 exchange for a controlled substance, an imitation controlled sub-  
10 stance, an androgenic anabolic steroid, ~~or~~ a counterfeit andro-  
11 genic anabolic steroid, OR OTHER DRUG in violation of this arti-  
12 cle or section 17766a, or that is used or intended to be used to  
13 facilitate any violation of this article or section 17766a  
14 including, but not limited to, money, negotiable instruments, or  
15 securities. To the extent of the interest of an owner, a thing  
16 of value is not subject to forfeiture under this subdivision by  
17 reason of any act or omission that is established by the owner of  
18 the item to have been committed or omitted without the owner's  
19 knowledge or consent. Any money that is found in close proximity  
20 to any property that is subject to forfeiture under subdivision  
21 (a), (b), (c), (d), or (e) ~~shall be~~ IS presumed to be subject  
22 to forfeiture under this subdivision. This presumption may be  
23 rebutted by clear and convincing evidence.

24 (g) Any other drug paraphernalia not described in subdivi-  
25 sion (b) or (c).

26 (2) As used in this section:

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1 (a) "Androgenic anabolic steroid" means that term as defined  
2 in section 17766a.

3 (b) "Counterfeit androgenic anabolic steroid" means that  
4 term as defined in section 17766a.

5 (c) "Imitation controlled substance" means that term as  
6 defined in section 7341.

[Enacting section 1. This amendatory act takes effect January  
1, 2001.]