

Act No. 302
Public Acts of 2000
Approved by the Governor
October 14, 2000
Filed with the Secretary of State
October 16, 2000
EFFECTIVE DATE: January 1, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 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
Reps. Allen, Basham, Birkholz, Bob Brown, Callahan, Clark, Clarke, Daniels, DeRossett, DeVuyst, Green, Hardman, Howell, Jansen, Jellema, Julian, Kuipers, LaSata, Law, Mans, Middaugh, O'Neil, Pappageorge, Patterson, Raczkowski, Schauer, Stamas, Toy and Vaughn named co-sponsors**

ENROLLED HOUSE BILL No. 5556

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 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:

Sec. 7401a. (1) A person who, without an individual's consent, delivers a controlled substance or a substance described in section 7401b or causes a controlled substance or a substance described in section 7401b to be delivered to that individual to commit or attempt to commit a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, against that individual is guilty of a felony punishable by imprisonment for not more than 20 years.

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

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

Sec. 7401b. (1) A person shall not do any of the following:

(a) Manufacture, deliver, or possess with intent to manufacture or deliver gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(b) Knowingly or intentionally possess gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone.

(2) Subsection (1) does not prohibit manufacturing, delivering, possessing with intent to manufacture or deliver, or possessing gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone for use in a commercial application and not for human consumption. It is an affirmative defense to a prosecution under this section that the person manufactured, delivered, possessed with intent to manufacture or deliver, or possessed gamma-butyrolactone or the material, compound, mixture, or preparation containing gamma-butyrolactone in compliance with this subsection.

(3) A person who violates this section is guilty of a crime as follows:

(a) For a violation of subsection (1)(a), the person 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.

(b) For a violation of subsection (1)(b), the person 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.

(4) As used in this section:

(a) "Commercial application" means as an ingredient in a lawful product, for use in the process of manufacturing a lawful product, or for lawful use as a solvent.

(b) "Deliver" means the actual, constructive, or attempted transfer from 1 person to another of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, whether or not there is an agency relationship.

(c) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of gamma-butyrolactone or any material, compound, mixture, or preparation containing gamma-butyrolactone, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. It includes the packaging or repackaging of the substance or labeling or relabeling of its container.

(d) "Person" means that term as defined in section 1106 or a governmental entity.

Sec. 7410. (1) Except as otherwise provided in subsections (2) and (3), an individual 18 years of age or over who violates section 7401(2)(a)(iv) by delivering or distributing a controlled substance listed in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) to an individual under 18 years of age who is at least 3 years the deliverer's or distributor's junior may be punished by the fine authorized by section 7401(2)(a)(iv) or by a term of imprisonment of not less than 1 year nor more than twice that authorized by section 7401(2)(a)(iv), or both. An individual 18 years of age or over who violates section 7401 or 7401b by delivering or distributing any other controlled substance listed in schedules 1 to 5 or gamma-butyrolactone to an individual under 18 years of age who is at least 3 years the distributor's junior may be punished by the fine authorized by section 7401(2)(b), (c), or (d) or 7401b, or by a term of imprisonment not more than twice that authorized by section 7401(2)(b), (c), or (d) or 7401b, or both.

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

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

(4) An individual 18 years of age or over who violates section 7401b or 7403(2)(a)(v), (b), (c), or (d) by possessing gamma-butyrolactone or a controlled substance on school property shall be punished by a term of imprisonment or a fine, or both, of not more than twice that authorized by section 7401b or 7403(2)(a)(v), (b), (c), or (d).

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

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

(7) A person who distributes marihuana without remuneration and not to further commercial distribution and who does not violate subsection (1) 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, unless the distribution is in accordance with the federal law or the law of this state.

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

(a) Violates section 7401(2)(a)(iv) by delivering a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) or is a substance described in section 7401b to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(b) Violates section 7401(2)(a)(iv) by possessing with intent to deliver a controlled substance described in schedule 1 or 2 that is either a narcotic drug or described in section 7214(a)(iv) or is a substance described in section 7401b to a minor who is in a public park or private park or within 1,000 feet of a public park or private park.

(c) Violates section 7403(2)(a)(v), (b), (c), or (d) by possessing a controlled substance or a substance described in section 7401b in a public park or private park.

(2) The term of imprisonment authorized under subsection (1) is in addition to the term of imprisonment authorized for the violation of section 7401(2)(a)(iv), section 7401b, or section 7403(2)(a)(v), (b), (c), or (d).

(3) As used in this section:

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

(b) “Public park” means real property owned or maintained by this state or a political subdivision of this state that is designated by this state or by that political subdivision as a public park.

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

(a) A prescription form, official prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, an androgenic anabolic steroid, a counterfeit androgenic anabolic steroid, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article or section 17766a.

(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, an androgenic anabolic steroid, a counterfeit androgenic anabolic steroid, or other drug in violation of this article or section 17766a; 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 or section 17766a.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, an androgenic anabolic steroid, a counterfeit androgenic anabolic steroid, or other drug in violation of this article or section 17766a that is traceable to an exchange for a controlled substance, an imitation controlled substance, an androgenic anabolic steroid, a counterfeit androgenic anabolic steroid, or other drug in violation of this article or section 17766a, or that is used or intended to be used to facilitate any violation of this article or section

17766a 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:

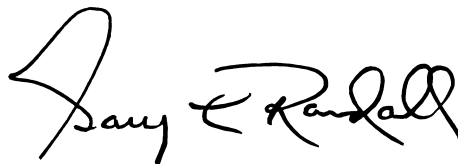
(a) "Androgenic anabolic steroid" means that term as defined in section 17766a.

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.