

# SENATE BILL No. 827

November 27, 2001, Introduced by Senators SHUGARS and HAMMERSTROM and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
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.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 7401. (1) Except as authorized by this article, a  
2 person shall not manufacture, create, deliver, or possess with  
3 intent to manufacture, create, or deliver a controlled substance,  
4 a prescription form, ~~an official prescription form,~~ or a coun-  
5 terfeit prescription form. A practitioner licensed by the admin-  
6 istrator under this article shall not dispense, prescribe, or  
7 administer a controlled substance for other than legitimate and  
8 professionally recognized therapeutic or scientific purposes or

1 outside the scope of practice of the practitioner, licensee, or  
2 applicant.

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

4 (a) A controlled substance classified in schedule 1 or 2  
5 that is a narcotic drug or a drug described in section  
6 7214(a)(iv) and:

7 (i) Which is in an amount of 650 grams or more of any mix-  
8 ture containing that substance is guilty of a felony punishable  
9 by imprisonment for life or any term of years but not less than  
10 20 years.

11 (ii) Which is in an amount of 225 grams or more, but less  
12 than 650 grams, of any mixture containing that substance is  
13 guilty of a felony and shall be imprisoned for not less than 20  
14 years nor more than 30 years.

15 (iii) Which is in an amount of 50 grams or more, but less  
16 than 225 grams, of any mixture containing that substance is  
17 guilty of a felony and shall be imprisoned for not less than 10  
18 years nor more than 20 years.

19 (iv) Which is in an amount less than 50 grams, of any mix-  
20 ture containing that substance is guilty of a felony and shall be  
21 imprisoned for not less than 1 year nor more than 20 years, and  
22 may be fined not more than \$25,000.00, or placed on probation for  
23 life.

24 (b) Either of the following:

25 (i) A substance described in section 7214(c)(ii) is guilty  
26 of a felony punishable by imprisonment for not more than 20 years  
27 or a fine of not more than \$25,000.00, or both.

1       (ii) Any other controlled substance classified in schedule  
2 1, 2, or 3, except marihuana is guilty of a felony punishable by  
3 imprisonment for not more than 7 years or a fine of not more than  
4 \$10,000.00, or both.

5       (c) A substance classified in schedule 4 is guilty of a  
6 felony punishable by imprisonment for not more than 4 years or a  
7 fine of not more than \$2,000.00, or both.

8       (d) Marihuana or a mixture containing marihuana is guilty of  
9 a felony punishable as follows:

10       (i) If the amount is 45 kilograms or more, or 200 plants or  
11 more, by imprisonment for not more than 15 years or a fine of not  
12 more than \$10,000,000.00, or both.

13       (ii) If the amount is 5 kilograms or more but less than 45  
14 kilograms, or 20 plants or more but fewer than 200 plants, by  
15 imprisonment for not more than 7 years or a fine of not more than  
16 \$500,000.00, or both.

17       (iii) If the amount is less than 5 kilograms or fewer than  
18 20 plants, by imprisonment for not more than 4 years or a fine of  
19 not more than \$20,000.00, or both.

20       (e) A substance classified in schedule 5 is guilty of a  
21 felony punishable by imprisonment for not more than 2 years or a  
22 fine of not more than \$2,000.00, or both.

23       ~~(f) An official prescription form or a counterfeit official~~  
24 ~~prescription form is guilty of a felony punishable by imprison-~~  
25 ~~ment for not more than 20 years or a fine of not more than~~  
26 ~~\$25,000.00, or both.~~

1       (F) ~~(g)~~ A prescription form or a counterfeit prescription  
2 form ~~other than an official prescription form or a counterfeit~~  
3 ~~official prescription form~~ is guilty of a felony punishable by  
4 imprisonment for not more than 7 years or a fine of not more than  
5 \$5,000.00, or both.

6       (3) A term of imprisonment imposed under subsection (2)(a)  
7 or section 7403(2)(a)(i), (ii), (iii), or (iv) shall be imposed  
8 to run consecutively with any term of imprisonment imposed for  
9 the commission of another felony. An individual subject to a  
10 mandatory term of imprisonment under subsection (2)(a) or section  
11 7403(2)(a)(i), (ii), (iii), or (iv) is not eligible for proba-  
12 tion, suspension of that sentence, or parole during that manda-  
13 tory term, except to the extent that those provisions permit pro-  
14 bation for life, and shall not receive a reduction in that manda-  
15 tory term of imprisonment by disciplinary credits or any other  
16 type of sentence credit reduction.

17       (4) The court may depart from the minimum term of imprison-  
18 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if  
19 the court finds on the record that there are substantial and com-  
20 pelling reasons to do so. In addition, if any of the following  
21 apply, the court may depart from the minimum term of imprisonment  
22 authorized under subsection (2)(a)(ii), (iii), or (iv) if the  
23 individual has not previously been convicted of a felony or an  
24 assaultive crime and has not been convicted of another felony or  
25 assaultive crime arising from the same transaction as the viola-  
26 tion of this section:

1 (a) The person is within the jurisdiction of the circuit  
2 court under section 606 of the revised judicature act of 1961,  
3 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the  
4 probate code of 1939, 1939 PA 288, MCL 712A.4.

5 (b) The person is being sentenced under section 18(1)(n) of  
6 chapter XIIIA of the probate code of 1939, 1939 PA 288,  
7 MCL 712A.18.

8 (5) As used in this section:

9 (a) "Assaultive crime" means a violation of sections 81 to  
10 90 of the Michigan penal code, 1931 PA 328, MCL 750.81 to  
11 750.90.

12 (b) "Plant" means a marihuana plant that has produced coty-  
13 ledons or a cutting of a marihuana plant that has produced  
14 cotyledons.

15 Sec. 7403. (1) A person shall not knowingly or intention-  
16 ally possess a controlled substance, a controlled substance anal-  
17 ogue, ~~or an official prescription form~~ or a prescription form  
18 unless the controlled substance, controlled substance analogue,  
19 ~~official prescription form,~~ or prescription form was obtained  
20 directly from, or pursuant to, a valid prescription or order of a  
21 practitioner while acting in the course of the practitioner's  
22 professional practice, or except as otherwise authorized by this  
23 article.

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

25 (a) A controlled substance classified in schedule 1 or 2  
26 that is a narcotic drug or a drug described in section  
27 7214(a)(iv), and:

1       (i) Which is in an amount of 650 grams or more of any  
2 mixture containing that substance is guilty of a felony and shall  
3 be imprisoned for life except as otherwise provided in this  
4 subparagraph. A person convicted of violating this subparagraph  
5 may be punished as provided by law by imposing a sentence of  
6 imprisonment for any term of years but not less than 25 years if  
7 any of the following apply:

8       (A) The person is within the jurisdiction of the circuit  
9 court under section 606 of the revised judicature act of 1961,  
10 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the  
11 probate code of 1939, 1939 PA 288, MCL 712A.4.

12       (B) The person is being sentenced under section 18(1)(n) of  
13 chapter XIIIA of the probate code of 1939, 1939 PA 288,  
14 MCL 712A.18.

15       (ii) Which is in an amount of 225 grams or more, but less  
16 than 650 grams, of any mixture containing that substance is  
17 guilty of a felony and shall be imprisoned for not less than 20  
18 years nor more than 30 years.

19       (iii) Which is in an amount of 50 grams or more, but less  
20 than 225 grams, of any mixture containing that substance is  
21 guilty of a felony and shall be imprisoned for not less than 10  
22 years nor more than 20 years.

23       (iv) Which is in an amount of 25 grams or more, but less  
24 than 50 grams of any mixture containing that substance is guilty  
25 of a felony and shall be imprisoned for not less than 1 year and  
26 not more than 4 years, and may be fined not more than \$25,000.00  
27 or placed on probation for life.

1 (v) Which is in an amount less than 25 grams of any mixture  
2 containing that substance is guilty of a felony punishable by  
3 imprisonment for not more than 4 years or a fine of not more than  
4 \$25,000.00, or both.

5 (b) Either of the following:

6 (i) A substance described in section 7214(c)(ii) is guilty  
7 of a felony punishable by imprisonment for not more than 10 years  
8 or a fine of not more than \$15,000.00, or both.

9 (ii) A controlled substance classified in schedule 1, 2, 3,  
10 or 4, except a controlled substance for which a penalty is pre-  
11 scribed in subdivision (a), (b)(i), (c), or (d), or a controlled  
12 substance analogue is guilty of a felony punishable by imprison-  
13 ment for not more than 2 years or a fine of not more than  
14 \$2,000.00, or both.

15 (c) Lysergic acid diethylamide, peyote, mescaline, dimethyl-  
16 tryptamine, psilocyn, psilocybin, or a controlled substance clas-  
17 sified in schedule 5 —, is guilty of a misdemeanor punishable by  
18 imprisonment for not more than 1 year or a fine of not more than  
19 \$2,000.00, or both.

20 (d) Marihuana —, is guilty of a misdemeanor punishable by  
21 imprisonment for not more than 1 year or a fine of not more than  
22 \$2,000.00, or both.

23 ~~—(e) An official prescription form, is guilty of a felony~~  
24 ~~punishable by imprisonment for not more than 1 year or a fine of~~  
25 ~~not more than \$2,000.00, or both.~~

26 (E) ~~—(f) A prescription form other than an official~~  
27 ~~prescription form,~~ is guilty of a misdemeanor punishable by

1 imprisonment for not more than 1 year or a fine of not more than  
2 \$1,000.00, or both.

3       (3) The court may depart from the minimum term of imprison-  
4 ment authorized under subsection (2)(a)(ii), (iii), or (iv) if  
5 the court finds on the record that there are substantial and com-  
6 pelling reasons to do so. In addition, if any of the following  
7 apply, the court may depart from the minimum term of imprisonment  
8 authorized under subsection (2)(a)(ii), (iii), or (iv) if the  
9 individual has not previously been convicted of a felony or an  
10 assaultive crime and has not been convicted of another felony or  
11 assaultive crime arising from the same transaction as the viola-  
12 tion of this section:

13       (a) The person is within the jurisdiction of the circuit  
14 court under section 606 of the revised judicature act of 1961,  
15 1961 PA 236, MCL 600.606, or section 4 of chapter XIIIA of the  
16 probate code of 1939, 1939 PA 288, MCL 712A.4.

17       (b) The person is being sentenced under section 18(1)(n) of  
18 chapter XIIIA of the probate code of 1939, 1939 PA 288,  
19 MCL 712A.18.

20       (4) As used in subsection (3), "assaultive crime" means a  
21 violation of sections 81 to 90 of the Michigan penal code, 1931  
22 PA 328, MCL 750.81 to 750.90.

23       Sec. 7407. (1) A person shall not knowingly or  
24 intentionally:

25       (a) Distribute as a licensee a controlled substance classi-  
26 fied in schedule 1 or 2, except pursuant to an order form as  
27 required by section 7331.

1 (b) Use in the course of the manufacture or distribution of  
2 a controlled substance a license number ~~which~~ THAT is ficti-  
3 tious, revoked, suspended, or issued to another person.

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

6 (d) Furnish false or fraudulent material information in, or  
7 omit any material information from, an application, report,  
8 ~~official prescription form,~~ or other document required to be  
9 kept or filed under this article, or any record required to be  
10 kept by this article.

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

17 ~~(f) Knowingly and intentionally give, permit, or obtain~~  
18 ~~access to information submitted to the department of commerce~~  
19 ~~under section 7334, except as otherwise authorized by this~~  
20 ~~article.~~

21 (F) ~~(g)~~ Possess counterfeit prescription forms, except as  
22 an agent of government while engaged in the enforcement of this  
23 part.

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

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

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

6       (a) A prescription form, ~~official prescription form,~~ con-  
7 trolled substance, an imitation controlled substance, a con-  
8 trolled substance analogue, ~~an androgenic anabolic steroid,~~ a  
9 counterfeit androgenic anabolic steroid, or other drug that has  
10 been manufactured, distributed, dispensed, used, possessed, or  
11 acquired in violation of this article or section 17766a.

12       (b) A raw material, product, or equipment of any kind that  
13 is used, or intended for use, in manufacturing, compounding, pro-  
14 cessing, delivering, importing, or exporting a controlled sub-  
15 stance, a controlled substance analogue, ~~an androgenic anabolic~~  
16 ~~steroid,~~ a counterfeit androgenic anabolic steroid, or other  
17 drug in violation of this article or section 17766a; or a raw  
18 material, product, or equipment of any kind that is intended for  
19 use in manufacturing, compounding, processing, delivering,  
20 importing, or exporting an imitation controlled substance in vio-  
21 lation of section 7341.

22       (c) Property that is used, or intended for use, as a con-  
23 tainer for property described in subdivision (a) or (b).

24       (d) Except as provided in subparagraphs (i) to (iv), a con-  
25 veyance, including an aircraft, vehicle, or vessel used or  
26 intended for use, to transport, or in any manner to facilitate

1 the transportation, for the purpose of sale or receipt of  
2 property described in subdivision (a) or (b):

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

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

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

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

19       (e) Books, records, and research products and materials,  
20 including formulas, microfilm, tapes, and data used, or intended  
21 for use, in violation of this article or section 17766a.

22       (f) Any thing of value that is furnished or intended to be  
23 furnished in exchange for a controlled substance, an imitation  
24 controlled substance, ~~an androgenic anabolic steroid,~~ a coun-  
25 terfeit androgenic anabolic steroid, or other drug in violation  
26 of this article or section 17766a that is traceable to an  
27 exchange for a controlled substance, an imitation controlled

1 substance, ~~an androgenic anabolic steroid,~~ a counterfeit  
 2 androgenic anabolic steroid, or other drug in violation of this  
 3 article or section 17766a, or that is used or intended to be used  
 4 to facilitate any violation of this article or section 17766a  
 5 including, but not limited to, money, negotiable instruments, or  
 6 securities. To the extent of the interest of an owner, a thing  
 7 of value is not subject to forfeiture under this subdivision by  
 8 reason of any act or omission that is established by the owner of  
 9 the item to have been committed or omitted without the owner's  
 10 knowledge or consent. Any money that is found in close proximity  
 11 to any property that is subject to forfeiture under subdivision  
 12 (a), (b), (c), (d), or (e) is presumed to be subject to forfei-  
 13 ture under this subdivision. This presumption may be rebutted by  
 14 clear and convincing evidence.

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

17 (2) As used in this section:

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

20 (A) ~~-(b)-~~ "Counterfeit androgenic anabolic steroid" means  
 21 that term as defined in section 17766a.

22 (B) ~~-(c)-~~ "Imitation controlled substance" means that term  
 23 as defined in section 7341.

24 Enacting section 1. Sections 7401, 7403, 7407, and 7521 of  
 25 the public health code, 1978 PA 368, MCL 333.7401, 333.7403,  
 26 333.7407, and 333.7521, as amended by this amendatory act, take  
 27 effect upon the promulgation of the rules required under section

1 7333a of the public health code, 1978 PA 368, and receipt by the  
2 secretary of state of written notice from the director of the  
3 department of consumer and industry services that the electronic  
4 monitoring system required by section 7333a is operational. The  
5 notice to the secretary of state shall include a statement that  
6 the department of consumer and industry services is able to  
7 receive data from at least 80% of those required to report under  
8 section 7333a of the public health code, 1978 PA 368, and is able  
9 to respond to requests for data from persons authorized to make  
10 such requests and to review and utilize the data.

11 Enacting section 2. This amendatory act does not take  
12 effect unless all of the following bills of the 91st Legislature  
13 are enacted into law:

- 14 (a) House Bill No. 5260.
- 15 (b) House Bill No. 5261.
- 16 (c) House Bill No. 5262.