

Act No. 135
Public Acts of 2001
Approved by the Governor
October 23, 2001
Filed with the Secretary of State
October 23, 2001
EFFECTIVE DATE: October 23, 2001

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Senators Van Regenmorter, Koivisto, North, Shugars, Peters, Miller, Byrum, Hart, Cherry, Emerson, Gougeon, Johnson, Garcia, Schuette, Hammerstrom, Bullard, Hoffman, Stille, Gast, DeBeaussaert, Smith, Murphy, Sikkema, Dunaskiss, Bennett, Steil, Goschka, McManus and Schwarz

ENROLLED SENATE BILL No. 497

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 200h, 200j, 222 and 237 (MCL 750.200h, 750.200j, 750.222 and 750.237), sections 200h and 200j as added by 1998 PA 207 and section 222 as amended by 1992 PA 217, and by adding section 200l.

The People of the State of Michigan enact:

Sec. 200h. As used in this section and sections 200i to 200l:

(a) "Chemical irritant" means solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other substances, can be used to produce an irritant effect in humans, animals, or plants.

(b) "Chemical irritant device" means a device designed or intended to release a chemical irritant.

(c) "Deliver" means that actual or constructive transfer of a substance or device from 1 person to another regardless of any agency relationship.

(d) "For an unlawful purpose" includes, but is not limited to, having the intent to do any of the following:

(i) Frighten, terrorize, intimidate, threaten, harass, injure, or kill any person.

(ii) Damage or destroy any real or personal property without the permission of the property owner or, if the property is public property, without the permission of the governmental agency having authority over the property.

(e) "Harmful biological device" means a device designed or intended to release a harmful biological substance.

(f) "Harmful biological substance" means a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants.

(g) "Harmful chemical device" means a device that is designed or intended to release a harmful chemical substance.

(h) "Harmful chemical substance" means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with 1 or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants.

(i) "Harmful radioactive material" means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity.

(j) "Harmful radioactive device" means a device that is designed or intended to release a harmful radioactive material.

(k) "Imitation harmful substance or device" means a substance or device that is designed or intended to represent 1 or more of the following or that is alleged to be 1 of the following but that is not any of the following:

- (i) A harmful biological device.
- (ii) A harmful biological substance.
- (iii) A harmful chemical device.
- (iv) A harmful chemical substance.
- (v) A harmful radioactive material.
- (vi) A radioactive device.

(l) "Serious impairment of a body function" means that term as defined in section 58C or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

Sec. 200j. (1) A person shall not manufacture, deliver, possess, transport, place, use, or release for an unlawful purpose any of the following:

- (a) A chemical irritant or a chemical irritant device.
- (b) A smoke device.
- (c) An imitation harmful substance or device.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) to (e), the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00, or both.

(b) If the violation results in property damage, the person 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) If the violation results in personal injury to another individual other than serious impairment of a body function or death, the person 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.

(d) If the violation results in serious impairment of a body function to another individual, the person is guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$25,000.00, or both.

(e) If the violation results in the death of another individual, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$40,000.00, or both.

Sec. 200l. (1) A person shall not commit an act with the intent to cause an individual to falsely believe that the individual has been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, or harmful radioactive device.

(2) A person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(3) The court also shall impose costs on a person who violates subsection (1) to reimburse any governmental agency for its expenses incurred as a result of the violation, in the manner provided in section 1f of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1f.

Sec. 222. As used in this chapter:

(a) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1105.

(b) "Barrel length" means the internal length of a firearm as measured from the face of the closed breech of the firearm when it is unloaded, to the forward face of the end of the barrel.

(c) "Controlled substance" means a controlled substance or controlled substance analogue as those terms are defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

(d) "Firearm" means a weapon from which a dangerous projectile may be propelled by an explosive, or by gas or air. Firearm does not include a smooth bore rifle or handgun designed and manufactured exclusively for propelling by a spring, or by gas or air, BB's not exceeding .177 caliber.

(e) "Pistol" means a loaded or unloaded firearm that is 30 inches or less in length, or a loaded or unloaded firearm that by its construction and appearance conceals itself as a firearm.

(f) "Purchaser" means a person who receives a pistol from another person by purchase, gift, or loan.

(g) "Seller" means a person who sells, furnishes, loans, or gives a pistol to another person.

(h) "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single function of the trigger.

(i) "Short-barreled shotgun" means a shotgun having 1 or more barrels less than 18 inches in length or a weapon made from a shotgun, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

(j) "Rifle" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(k) "Short-barreled rifle" means a rifle having 1 or more barrels less than 16 inches in length or a weapon made from a rifle, whether by alteration, modification, or otherwise, if the weapon as modified has an overall length of less than 26 inches.

Sec. 237. (1) An individual shall not carry, have in possession or under control, or use in any manner or discharge a firearm under any of the following circumstances:

(a) The individual is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The individual has an alcohol content of 0.08 or more grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) Because of the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the individual's ability to use a firearm is visibly impaired.

(2) Except as provided in subsections (3) and (4), an individual who violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00 for carrying or possessing a firearm, or both, and not more than \$500.00 for using or discharging a firearm, or both.

(3) An individual who violates subsection (1) and causes a serious impairment of a body function of another individual by the discharge or use in any manner of the firearm is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or use of a limb.

(b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

(e) Serious visible disfigurement.

(f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

(j) Loss of an organ.

(4) An individual who violates subsection (1) and causes the death of another individual by the discharge or use in any manner of a firearm is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A peace officer who has probable cause to believe an individual violated subsection (1) may require the individual to submit to a chemical analysis of his or her breath, blood, or urine. However, an individual who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not required to submit to a chemical analysis of his or her blood.

(6) Before an individual is required to submit to a chemical analysis under subsection (5), the peace officer shall inform the individual of all of the following:

(a) The individual may refuse to submit to the chemical analysis, but if he or she refuses, the officer may obtain a court order requiring the individual to submit to a chemical analysis.

(b) If the individual submits to the chemical analysis, he or she may obtain a chemical analysis from a person of his or her own choosing.

(7) The failure of a peace officer to comply with the requirements of subsection (6) does not render the results of a chemical analysis inadmissible as evidence in a criminal prosecution for violating this section, in a civil action arising out of a violation of this section, or in any administrative proceeding arising out of a violation of this section.

(8) The collection and testing of breath, blood, or urine specimens under this section shall be conducted in the same manner that breath, blood, or urine specimens are collected and tested for alcohol— and controlled-substance-related driving violations under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

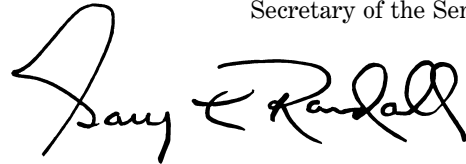
(9) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as the violation of this section in lieu of being charged with, convicted of, or sentenced for the violation of this section.

Enacting section 1. Sections 222 and 237 of the Michigan penal code, 1931 PA 328, as amended by this amendatory act, take effect February 1, 2002.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.