

Act No. 139
Public Act of 1988
Approved by the Governor
June 2, 1988
Filed by the Secretary of State
June 3, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Senators Ehlers, Nichols, Kelly, Welborn, DeGrow, Sederburg, Geake, Smith, Shinkle,
Carl, Dillingham and Arthurhultz

ENROLLED SENATE BILL No. 288

AN ACT to amend the title and section 7521 of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 provide for penalties and remedies; to repeal certain acts and parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 60 of the Public Acts of 1988, being section 333.7521 of the Michigan Compiled Laws; and to add sections 7451, 7453, 7455, 7457, 7459, and 7461.

The People of the State of Michigan enact:

Section 1. The title and section 7521 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 60 of the Public Acts of 1988, being section 333.7521 of the Michigan Compiled Laws, are amended and sections 7451, 7453, 7455, 7457, 7459, and 7461 are added to read as follows:

TITLE

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 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 penalties and remedies; 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.

Sec. 7451. As used in sections 7453 to 7461 and section 7521, "drug paraphernalia" means any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting; propagating; cultivating; growing; harvesting; manufacturing; compounding; converting; producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance; including, but not limited to, all of the following:

(a) An isomerization device specifically designed for use in increasing the potency of any species of plant which plant is a controlled substance.

(b) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.

(c) A weight scale or balance specifically designed for use in weighing or measuring a controlled substance.

(d) A diluent or adulterant, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose, and lactose, specifically designed for use with a controlled substance.

(e) A separation gin or sifter specifically designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana.

(f) An object specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

(g) A kit specifically designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.

(h) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(i) A device, commonly known as a cocaine kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.

(j) A device, commonly known as a bullet, that is specifically designed to deliver a measured amount of controlled substances to the user.

(k) A device, commonly known as a snorter, that is specifically designed to carry a small amount of controlled substances to the user's nose.

(l) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not limited to, a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.

(m) A spoon, with or without a chain attached, that has a small diameter bowl and that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body.

Sec. 7453. (1) Subject to subsection (2), a person shall not sell or offer for sale drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) Before a person is arrested for a violation of subsection (1), the attorney general or a prosecuting attorney shall notify the person in writing, not less than 2 business days before the person is to be arrested, that the person is in possession of specific, defined material that has been determined by the attorney general or prosecuting attorney to be drug paraphernalia. The notice also shall request that the person refrain from selling or offering for sale the material and shall state that if the person complies with the notice, no arrest will be made for a violation of subsection (1).

(3) If a person complies with a notice sent under subsection (2), the compliance is a complete defense for the person against a prosecution under section 7453, as long as the compliance continues.

Sec. 7455. (1) A person who violates section 7453 is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$5,000.00, or both.

(2) A person 18 years of age or older who violates section 7453 by selling or offering to sell drug paraphernalia to a person less than 18 years of age is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$7,500.00, or both.

Sec. 7457. Sections 7451 to 7455 do not apply to any of the following:

(a) An object sold or offered for sale to a person licensed under article 15 or under the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.101 to 339.2721 of the Michigan Compiled Laws, or any intern, trainee, apprentice, or assistant in a profession licensed under article 15 or under Act No. 299 of the Public Acts of 1980 for use in that profession.

(b) An object sold or offered for sale to any hospital, sanitarium, clinical laboratory, or other health care institution including a penal, correctional, or juvenile detention facility for use in that institution.

(c) An object sold or offered for sale to a dealer in medical, dental, surgical, or pharmaceutical supplies.

(d) Equipment, a product, or material which may be used in the preparation or smoking of tobacco or smoking herbs other than a controlled substance.

(e) A blender, bowl, container, spoon, or mixing device not specifically designed for a use described in section 7451.

(f) A hypodermic syringe or needle sold or offered for sale for the purpose of injecting or otherwise treating livestock or other animals.

(g) An object sold, offered for sale, or given away by a state or local governmental agency or by a person specifically authorized by a state or local governmental agency to prevent the transmission of infectious agents.

Sec. 7459. (1) A person who has received a notice under section 7453(2) may commence an action for a declaratory judgment to obtain an adjudication of the legality of the intended sale or offer to sell.

(2) The attorney general or the prosecuting attorney who sent the notice under section 7453(2) shall be made the defendant to an action commenced under subsection (1).

Sec. 7461. If a declaratory judgment has been issued pursuant to section 7459 stating that sale or offer to sell specified material does not violate section 7453, the declaratory judgment is a complete defense for the person obtaining such a judgment against a prosecution under section 7453.

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

(a) A prescription form, official prescription form, controlled substance, an imitation controlled substance, or a controlled substance analogue which has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

(b) A raw material, product, or equipment of any kind which is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance or a controlled substance analogue in violation of this article; or a raw material, product, or equipment of any kind which is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

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

(d) 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), but:

(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 thereof 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.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance or an imitation controlled substance in violation of this article, traceable to an exchange for a controlled substance or an imitation controlled substance in violation of this article, or used or intended to be used to facilitate any violation of this article 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) shall be 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, "imitation controlled substance" means an imitation controlled substance as defined in section 7341.

Section 2. This amendatory act shall take effect June 1, 1988.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved

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Governor.