

SENATE BILL No. 288

May 13, 1987, Introduced by Senators EHLERS, NICHOLS, KELLY, WELBORN, DE GROW, SEDERBURG, GEAKE, SMITH, SHINKLE, CARL, DILLINGHAM and ARTHURHULTZ and referred to the Committee on Judiciary.

A bill to amend the title and section 7521 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 347 of the Public Acts of 1984, being section 333.7521 of the Michigan Compiled Laws; and to add sections 7451, 7452, 7453, 7454, and 7455.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 7521 of Act No. 368 of the
2 Public Acts of 1978, as amended by Act No. 347 of the Public Acts
3 of 1984, being section 333.7521 of the Michigan Compiled Laws,
4 are amended and sections 7451, 7452, 7453, 7454, and 7455 are
5 added to read as follows:

TITLE

1
2 An act to protect and promote the public health; to codify,
3 revise, consolidate, classify, and add to the laws relating to
4 public health; to provide for the prevention and control of dis-
5 eases and disabilities; to provide for the classification, admin-
6 istration, regulation, financing, and maintenance of personal,
7 environmental, and other health services and activities; to
8 create or continue, and prescribe the powers and duties of,
9 departments, boards, commissions, councils, committees, task
10 forces, and other agencies; to prescribe the powers and duties of
11 governmental entities and officials; to regulate occupations,
12 facilities, and agencies affecting the public health; to regulate
13 health maintenance organizations and certain third party adminis-
14 trators and insurers; to promote the efficient and economical
15 delivery of health care services, to provide for the appropriate
16 utilization of health care facilities and services, and to pro-
17 vide for the closure of hospitals or consolidation of hospitals
18 or services; to provide for the collection and use of data and
19 information; to provide for the transfer of property; to provide
20 certain immunity from liability; TO REGULATE AND TO PROHIBIT THE
21 POSSESSION, USE, DELIVERY, AND MANUFACTURE, OF CONTROLLED SUB-
22 STANCES AND DRUG PARAPHERNALIA UNDER CERTAIN CIRCUMSTANCES; TO
23 PROHIBIT THE ADVERTISING FOR SALE OF DRUG PARAPHERNALIA; to pro-
24 vide for penalties and remedies; and to repeal certain acts and
25 parts of acts.

26 SEC. 7451. AS USED IN SECTIONS 7452 TO 7454 AND SECTION
27 7521, "DRUG PARAPHERNALIA" MEANS ANY EQUIPMENT, PRODUCT,

1 MATERIAL, OR COMBINATION OF EQUIPMENT, PRODUCTS, OR MATERIALS,
2 WHICH IS USED, INTENDED FOR USE, OR SPECIFICALLY DESIGNED FOR
3 USE, IN PLANTING; PROPAGATING; CULTIVATING; GROWING; HARVESTING;
4 MANUFACTURING; COMPOUNDING; CONVERTING; PRODUCING; PROCESSING;
5 PREPARING; TESTING; ANALYZING; PACKAGING; REPACKAGING; STORING;
6 CONTAINING; CONCEALING; INJECTING, INGESTING, INHALING, OR OTHER-
7 WISE INTRODUCING INTO THE HUMAN BODY A CONTROLLED SUBSTANCE;
8 INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

9 (i) AN ISOMERIZATION DEVICE USED, INTENDED FOR USE, OR SPE-
10 CIFICALLY DESIGNED FOR USE IN INCREASING THE POTENCY OF ANY SPE-
11 CIES OF PLANT WHICH PLANT IS A CONTROLLED SUBSTANCE.

12 (ii) TESTING EQUIPMENT USED, INTENDED FOR USE, OR SPECIFI-
13 CALLY DESIGNED FOR USE IN IDENTIFYING, OR IN ANALYZING THE
14 STRENGTH, EFFECTIVENESS, OR PURITY OF A CONTROLLED SUBSTANCE.

15 (iii) WEIGHT SCALE OR BALANCE USED, INTENDED FOR USE, OR
16 SPECIFICALLY DESIGNED FOR USE IN WEIGHING OR MEASURING A CON-
17 TROLLED SUBSTANCE.

18 (iv) A DILUENT OR ADULTERANT, SUCH AS QUININE HYDROCHLORIDE,
19 MANNITOL, MANNITE, DEXTROSE, AND LACTOSE, USED, INTENDED FOR USE,
20 OR SPECIFICALLY DESIGNED FOR USE WITH A CONTROLLED SUBSTANCE.

21 (v) A SEPARATION GIN OR SIFTER USED, INTENDED FOR USE, OR
22 SPECIFICALLY DESIGNED FOR USE IN REMOVING TWIGS AND SEEDS FROM,
23 OR IN OTHERWISE CLEANING OR REFINING, MARIHUANA.

24 (vi) A BLENDER, BOWL, CONTAINER, SPOON, OR MIXING DEVICE
25 USED, INTENDED FOR USE, OR SPECIFICALLY DESIGNED FOR USE IN COM-
26 POUNDING A CONTROLLED SUBSTANCE.

1 (vii) A CAPSULE, BALLOON, ENVELOPE, OR OTHER CONTAINER USED,
2 INTENDED FOR USE, OR SPECIFICALLY DESIGNED FOR USE IN PACKAGING A
3 CONTROLLED SUBSTANCE.

4 (viii) A CONTAINER OR OTHER OBJECT USED, INTENDED FOR USE,
5 OR SPECIFICALLY DESIGNED FOR USE IN STORING OR CONCEALING A CON-
6 TROLLED SUBSTANCE.

7 (ix) A HYPODERMIC SYRINGE, NEEDLE, OR OTHER OBJECT USED,
8 INTENDED FOR USE, OR SPECIFICALLY DESIGNED FOR USE IN INJECTING A
9 CONTROLLED SUBSTANCE INTO THE HUMAN BODY.

10 (x) AN OBJECT USED, INTENDED FOR USE, OR SPECIFICALLY
11 DESIGNED FOR USE IN INGESTING, INHALING, OR OTHERWISE INTRODUCING
12 MARIHUANA, COCAINE, HASHISH, OR HASHISH OIL INTO THE HUMAN BODY,
13 INCLUDING ALL OF THE FOLLOWING:

14 (A) A METAL, WOODEN, ACRYLIC, GLASS, STONE, PLASTIC, OR
15 CERAMIC PIPE.

16 (B) A WATER PIPE.

17 (C) A CARBURETION TUBE OR DEVICE.

18 (D) A SMOKING OR CARBURETION MASK.

19 (E) A ROACH CLIP, BEING AN OBJECT USED TO HOLD BURNING MATE-
20 RIAL, SUCH AS A MARIHUANA CIGARETTE THAT HAS BECOME TOO SMALL OR
21 TOO SHORT TO BE HELD IN THE HAND.

22 (F) A MINIATURE COCAINE SPOON OR COCAINE VIAL.

23 (G) A CHAMBER PIPE.

24 (H) A CARBURETOR PIPE.

25 (I) AN ELECTRIC PIPE.

26 (J) AN AIR-DRIVEN PIPE.

1 (K) A CHILLUM.

2 (L) A BONG.

3 (M) AN ICE PIPE OR CHILLER.

4 (xi) A KIT USED, INTENDED FOR USE, OR SPECIFICALLY DESIGNED
5 FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, OR HAR-
6 VESTING OF ANY SPECIES OF PLANT WHICH IS A CONTROLLED SUBSTANCE
7 OR FROM WHICH A CONTROLLED SUBSTANCE CAN BE DERIVED.

8 (xii) A KIT USED, INTENDED FOR USE, OR SPECIFICALLY DESIGNED
9 FOR USE IN MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING,
10 PROCESSING, OR PREPARING CONTROLLED SUBSTANCES.

11 SEC. 7452. IN DETERMINING WHETHER AN OBJECT IS DRUG PARA-
12 PHERNALIA, IN ADDITION TO ALL OTHER LOGICALLY RELEVANT FACTORS,
13 ALL OF THE FOLLOWING SHALL BE CONSIDERED:

14 (A) STATEMENTS BY AN OWNER OR BY ANYONE IN CONTROL OF THE
15 OBJECT CONCERNING THE USE OF THE OBJECT.

16 (B) PRIOR CONVICTIONS, IF ANY, OF AN OWNER, OR OF ANYONE IN
17 CONTROL OF THE OBJECT, UNDER ANY STATE OR FEDERAL LAW RELATING TO
18 ANY CONTROLLED SUBSTANCE.

19 (C) THE PROXIMITY OF THE OBJECT TO A CONTROLLED SUBSTANCE OR
20 A VIOLATION OF THIS ACT.

21 (D) THE EXISTENCE OF ANY RESIDUE OF A CONTROLLED SUBSTANCE
22 ON OR IN THE OBJECT.

23 (E) DIRECT OR CIRCUMSTANTIAL EVIDENCE OF THE INTENT OF AN
24 OWNER, OR OF ANYONE IN CONTROL OF THE OBJECT, TO DELIVER THE
25 OBJECT TO A PERSON WHOM HE OR SHE KNOWS INTENDS TO USE THE OBJECT
26 IN VIOLATION OF SECTION 7453. THE INNOCENCE OF AN OWNER, OR OF
27 ANYONE IN CONTROL OF THE OBJECT, AS TO A VIOLATION OF

1 SECTION 7453 SHALL NOT PREVENT A FINDING THAT THE OBJECT IS
2 INTENDED FOR USE OR SPECIFICALLY DESIGNED FOR USE AS DRUG
3 PARAPHERNALIA.

4 (F) INSTRUCTIONS, ORAL OR WRITTEN, PROVIDED WITH THE OBJECT
5 CONCERNING THE USE OF THE OBJECT.

6 (G) DESCRIPTIVE MATERIALS ACCOMPANYING THE OBJECT WHICH
7 EXPLAIN OR DEPICT THE USE OF THE OBJECT.

8 (H) NATIONAL AND LOCAL ADVERTISING CONCERNING THE USE OF THE
9 OBJECT.

10 (I) THE MANNER IN WHICH THE OBJECT IS DISPLAYED FOR SALE.

11 (J) THE EXISTENCE AND SCOPE OF LEGITIMATE USES FOR THE
12 OBJECT.

13 (K) EXPERT TESTIMONY CONCERNING THE USE OR USES OF THE
14 OBJECT.

15 (L) WHETHER THE OWNER, OR ANYONE IN CONTROL OF THE OBJECT,
16 IS A LEGITIMATE SUPPLIER OF SIMILAR OBJECTS TO THE COMMUNITY,
17 SUCH AS A LICENSED DISTRIBUTOR OR DEALER OF TOBACCO PRODUCTS.

18 (M) DIRECT OR CIRCUMSTANTIAL EVIDENCE OF THE RATIO OF SALES
19 BY THE OWNER OF THE OBJECT TO THE TOTAL SALES OF THE BUSINESS
20 ENTERPRISE.

21 SEC. 7453. (1) A PERSON SHALL NOT USE, OR POSSESS WITH
22 INTENT TO USE, DRUG PARAPHERNALIA TO PLANT, PROPAGATE, CULTIVATE,
23 GROW, HARVEST, MANUFACTURE, COMPOUND, CONVERT, PRODUCE, PROCESS,
24 PREPARE, TEST, ANALYZE, PACK, REPACK, STORE, CONTAIN, CONCEAL,
25 INJECT, INGEST, INHALE, OR OTHERWISE INTRODUCE INTO THE HUMAN
26 BODY A CONTROLLED SUBSTANCE.

1 (2) A PERSON SHALL NOT DELIVER, POSSESS WITH INTENT TO
2 DELIVER, OR MANUFACTURE WITH INTENT TO DELIVER, DRUG
3 PARAPHERNALIA, KNOWING, OR HAVING REASON TO KNOW, THAT THE DRUG
4 PARAPHERNALIA WILL BE USED TO PLANT, PROPAGATE, CULTIVATE, GROW,
5 HARVEST, MANUFACTURE, COMPOUND, CONVERT, PRODUCE, PROCESS, PRE-
6 PARE, TEST, ANALYZE, PACK, REPACK, STORE, CONTAIN, CONCEAL,
7 INJECT, INGEST, INHALE, OR OTHERWISE INTRODUCE INTO THE HUMAN
8 BODY A CONTROLLED SUBSTANCE.

9 (3) A PERSON SHALL NOT PLACE IN ANY NEWSPAPER, MAGAZINE,
10 HANDBILL, OR OTHER PUBLICATION ANY ADVERTISEMENT, KNOWING, OR
11 HAVING REASON TO KNOW, THAT THE PURPOSE OF THE ADVERTISEMENT, IN
12 WHOLE OR IN PART, IS TO PROMOTE THE SALE OF DRUG PARAPHERNALIA.

13 SEC. 7454. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), A
14 PERSON WHO VIOLATES SECTION 7453 IS GUILTY OF A MISDEMEANOR, PUN-
15 ISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS, OR A FINE OF
16 NOT MORE THAN \$5,000.00, OR BOTH.

17 (2) A PERSON 18 YEARS OF AGE OR OLDER WHO VIOLATES
18 SECTION 7453(2) BY DELIVERING DRUG PARAPHERNALIA TO A PERSON LESS
19 THAN 18 YEARS OF AGE IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY
20 IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR A FINE OF NOT MORE THAN
21 \$7,500.00, OR BOTH.

22 SEC. 7455. SECTIONS 7451 TO 7454 DO NOT APPLY TO ANY OF THE
23 FOLLOWING:

24 (A) AN OBJECT SOLD OR OFFERED FOR SALE TO A LICENSED PHYSI-
25 CIAN, OSTEOPATH, DENTIST, VETERINARIAN, NURSE, PHARMACIST, PODIA-
26 TRIST, CHIROPRACTOR, PSYCHOLOGIST, PHYSICAL THERAPIST, EMBALMER,
27 OR FUNERAL DIRECTOR OR ANY INTERN, TRAINEE, APPRENTICE, OR

1 ASSISTANT IN ANY OF THE PROFESSIONS ENUMERATED IN THIS
2 SUBDIVISION FOR USE IN THAT PROFESSION.

3 (B) AN OBJECT SOLD OR OFFERED FOR SALE TO ANY HOSPITAL, SAN-
4 ITARIUM, CLINICAL LABORATORY, OR OTHER HEALTH CARE INSTITUTION
5 INCLUDING A PENAL, CORRECTIONAL, OR JUVENILE DETENTION FACILITY
6 FOR USE IN THAT INSTITUTION.

7 (C) A HYPODERMIC SYRINGE OR NEEDLE SOLD OR OFFERED FOR SALE
8 FOR THE PURPOSE OF INJECTING OR OTHERWISE TREATING LIVESTOCK OR
9 OTHER ANIMALS.

10 (D) A HYPODERMIC NEEDLE OR SYRINGE SOLD OR OFFERED FOR SALE
11 FOR THE PURPOSE OF INJECTING A SUBSTANCE OTHER THAN A CONTROLLED
12 SUBSTANCE.

13 (E) A SMOKING PIPE IF THE SELLER REASONABLY BELIEVES THE
14 PIPE IS FOR THE PURPOSE OF DISPLAY, DECORATION, OR SMOKING A SUB-
15 STANCE OTHER THAN A CONTROLLED SUBSTANCE.

16 (F) AN OBJECT SOLD OR OFFERED FOR SALE TO A DEALER IN MEDI-
17 CAL, DENTAL, SURGICAL, OR PHARMACEUTICAL SUPPLIES.

18 (G) A HYPODERMIC SYRINGE, NEEDLE, OR OTHER OBJECT POSSESSED
19 BY A DIABETIC OR OTHER PERSON FOR THE TREATMENT OF DISABILITY OR
20 DISEASE UNDER THE AUTHORIZATION OF A LICENSED HEALTH CARE
21 PROFESSIONAL.

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

24 (a) A controlled substance or an imitation controlled sub-
25 stance which has been manufactured, distributed, dispensed, used,
26 possessed, or acquired in violation of this article.

1 (b) A raw material, product, or equipment of any kind which
2 is used, or intended for use, in manufacturing, compounding,
3 processing, delivering, importing, or exporting a controlled sub-
4 stance in violation of this article; or a raw material, product,
5 or equipment of any kind which is intended for use in manufactur-
6 ing, compounding, processing, delivering, importing, or exporting
7 an imitation controlled substance in violation of section 7341.

8 (c) Property which is used, or intended for use, as a con-
9 tainer for property described in subdivision (a) or (b).

10 (d) A conveyance, including an aircraft, vehicle, or vessel
11 used or intended for use, to transport, or in any manner to
12 facilitate the transportation, for the purpose of sale or receipt
13 of property described in subdivision (a) or (b), but:

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

19 (ii) A conveyance is not subject to forfeiture by reason of
20 any act or omission established by the owner thereof to have been
21 committed or omitted without the owner's knowledge or consent.

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

25 (iv) A forfeiture of a conveyance encumbered by a bona fide
26 security interest is subject to the interest of the secured party

1 who neither had knowledge of nor consented to the act or
2 omission.

3 (e) Books, records, and research products and materials,
4 including formulas, microfilm, tapes, and data used, or intended
5 for use, in violation of this article.

6 (f) Any thing of value that is furnished or intended to be
7 furnished in exchange for a controlled substance or an imitation
8 controlled substance in violation of this article, traceable to
9 an exchange for a controlled substance or an imitation controlled
10 substance in violation of this article, or used or intended to be
11 used to facilitate any violation of this article including but
12 not limited to money, negotiable instruments, or securities. To
13 the extent of the interest of an owner, a thing of value is not
14 subject to forfeiture under this subdivision by reason of any act
15 or omission that is established by the owner of the item to have
16 been committed or omitted without the owner's knowledge or
17 consent. Any money that is found in close proximity to any prop-
18 erty that is subject to forfeiture under subdivision (a), (b),
19 (c), (d), ~~or~~ (e), OR (G) shall be presumed to be subject to
20 forfeiture under this subdivision. This presumption may be
21 rebutted by clear and convincing evidence.

22 (G) ANY OTHER DRUG PARAPHERNALIA NOT DESCRIBED IN SUBDIVI-
23 SION (B) OR (C).

24 (2) As used in this section, "imitation controlled
25 substance" means an imitation controlled substance as defined in
26 section 7341.