

SUBSTITUTE FOR
SENATE BILL NO. 189

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding section 17766b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 17766B. (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS
2 SECTION, A PERSON WHO POSSESSES EPHEDRINE OR PSEUDOEPHEDRINE FOR
3 RETAIL SALE PURSUANT TO A LICENSE ISSUED UNDER THE GENERAL SALES
4 TAX ACT, 1933 PA 167, MCL 205.51 TO 205.78, SHALL MAINTAIN ALL
5 PRODUCTS THAT CONTAIN ANY COMPOUND, MIXTURE, OR PREPARATION
6 CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE,
7 A SALT OR OPTICAL ISOMER OF EPHEDRINE OR PSEUDOEPHEDRINE, OR A SALT
8 OF AN OPTICAL ISOMER OF EPHEDRINE OR PSEUDOEPHEDRINE BEHIND A
9 COUNTER WHERE THE PUBLIC IS NOT PERMITTED, WITHIN A LOCKED CASE SO
10 THAT A CUSTOMER WANTING ACCESS TO THE PRODUCT MUST ASK A STORE

1 EMPLOYEE FOR ASSISTANCE, OR WITHIN 20 FEET OF A COUNTER THAT ALLOWS
2 THE ATTENDANT TO VIEW THE PRODUCTS IN AN UNOBSTRUCTED MANNER OR
3 UTILIZE AN ANTITHEFT DEVICE ON THOSE PRODUCTS THAT USES SPECIAL
4 PACKAGE TAGS AND DETECTION ALARMS DESIGNED TO PREVENT THEFT ALONG
5 WITH CONSTANT VIDEO SURVEILLANCE AS FOLLOWS:

6 (A) THE VIDEO CAMERA IS POSITIONED SO THAT INDIVIDUALS
7 EXAMINING OR REMOVING THOSE PRODUCTS ARE VISIBLE.

8 (B) THE VIDEO CAMERA IS PROGRAMMED TO RECORD, AT A MINIMUM, A
9 1-SECOND IMAGE EVERY 10 SECONDS.

10 (C) THE VIDEO IMAGES MUST BE MAINTAINED FOR A MINIMUM OF 6
11 MONTHS AND MADE AVAILABLE TO ANY LAW ENFORCEMENT AGENCY UPON
12 REQUEST.

13 (D) THE RETAILER SHALL PROMINENTLY DISPLAY A SIGN INDICATING
14 THAT THE AREA IS UNDER CONSTANT VIDEO SURVEILLANCE IN A CONSPICUOUS
15 LOCATION, CLEARLY VISIBLE TO THE PUBLIC.

16 (2) IF THE PRODUCTS DESCRIBED UNDER SUBSECTION (1) ARE
17 MAINTAINED WITHIN 20 FEET OF A COUNTER AND THAT COUNTER IS NOT
18 STAFFED BY 1 OR MORE EMPLOYEES AT ALL TIMES, THEN THE RETAIL
19 DISTRIBUTOR SHALL UTILIZE ANTITHEFT DEVICES AND VIDEO SURVEILLANCE
20 AS PROVIDED UNDER SUBSECTION (1) WHEN THE COUNTER IS NOT STAFFED.
21 IF ALL OF THE PRODUCTS DESCRIBED UNDER SUBSECTION (1) ARE
22 MAINTAINED BEHIND THE COUNTER OR WITHIN A LOCKED CASE, THEN THE
23 RETAILER IS NOT REQUIRED TO MAINTAIN A LOG OR ANY OTHER TYPE OF
24 RECORD DETAILING THE SALE OF THOSE PRODUCTS.

25 (3) A PERSON WHO SELLS A PRODUCT DESCRIBED IN SUBSECTION (1)
26 SHALL DO EACH OF THE FOLLOWING:

27 (A) REQUIRE THE PURCHASER OF A PRODUCT DESCRIBED UNDER

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1 SUBSECTION (1) TO PRODUCE A VALID PHOTO IDENTIFICATION THAT
2 INCLUDES THE INDIVIDUAL'S NAME AND DATE OF BIRTH.

3 (B) EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (2),
4 MAINTAIN A LOG OR SOME TYPE OF RECORD DETAILING THE SALE OF A
5 PRODUCT DESCRIBED UNDER SUBSECTION (1), INCLUDING THE DATE OF THE
6 SALE, THE NAME AND DATE OF BIRTH OF THE BUYER, AND THE AMOUNT AND
7 DESCRIPTION OF THE PRODUCT SOLD. THE LOG OR OTHER MEANS OF
8 RECORDING THE SALE AS REQUIRED UNDER THIS SUBDIVISION SHALL BE
9 MAINTAINED FOR A MINIMUM OF 6 MONTHS AND MADE AVAILABLE TO <<ONLY A>> LAW
10 ENFORCEMENT AGENCY UPON REQUEST. <<THE LOG OR OTHER MEANS OF RECORDING
THE SALE IS NOT A PUBLIC RECORD AND IS NOT SUBJECT TO THE FREEDOM OF
INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. A PERSON SHALL NOT
SELL OR PROVIDE A COPY OF THE LOG OR OTHER MEANS OF RECORDING THE SALE TO
ANOTHER FOR THE PURPOSE OF SURVEYS, MARKETING, OR SOLICITATIONS.>>

11 (4) A PERSON SHALL NOT KNOWINGLY DO ANY OF THE FOLLOWING:

12 (A) SELL ANY PRODUCT DESCRIBED UNDER SUBSECTION (1) TO AN
13 INDIVIDUAL UNDER 18 YEARS OF AGE.

14 (B) SELL IN A SINGLE OVER-THE-COUNTER SALE MORE THAN 2
15 PACKAGES, OR 48 TABLETS OR CAPSULES, OF ANY PRODUCT DESCRIBED UNDER
16 SUBSECTION (1) TO ANY INDIVIDUAL.

17 (C) SELL IN A SINGLE OVER-THE-COUNTER SALE MORE THAN 2
18 PERSONAL CONVENIENCE PACKAGES CONTAINING 2 TABLETS OR CAPSULES EACH
19 OF ANY PRODUCT DESCRIBED UNDER SUBSECTION (1) TO ANY INDIVIDUAL.

20 (5) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

21 (A) A PEDIATRIC PRODUCT PRIMARILY INTENDED FOR ADMINISTRATION
22 TO CHILDREN UNDER 12 YEARS OF AGE ACCORDING TO LABEL INSTRUCTIONS.

23 (B) A PRODUCT CONTAINING PSEUDOEPHEDRINE THAT IS IN A LIQUID
24 FORM IF PSEUDOEPHEDRINE IS NOT THE ONLY ACTIVE INGREDIENT.

25 (C) A PRODUCT THAT THE STATE BOARD OF PHARMACY, UPON
26 APPLICATION OF A MANUFACTURER OR CERTIFICATION BY THE UNITED STATES
27 DRUG ENFORCEMENT ADMINISTRATION AS INCONVERTIBLE, EXEMPTS FROM THIS

1 SECTION BECAUSE THE PRODUCT HAS BEEN FORMULATED IN SUCH A WAY AS TO
2 EFFECTIVELY PREVENT THE CONVERSION OF THE ACTIVE INGREDIENT INTO
3 METHAMPHETAMINE.

4 (D) A PRODUCT THAT IS DISPENSED PURSUANT TO A PRESCRIPTION.

5 (6) A PERSON WHO VIOLATES THIS SECTION IS RESPONSIBLE FOR A
6 STATE CIVIL INFRACTION AS PROVIDED UNDER CHAPTER 88 OF THE REVISED
7 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.8801 TO 600.8835, AND
8 MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$50.00 FOR EACH
9 VIOLATION.

10 (7) A PERSON DESCRIBED UNDER SUBSECTION (1) SHALL POST, IN A
11 PLACE CLOSE TO THE POINT OF SALE AND CONSPICUOUS TO BOTH EMPLOYEES
12 AND CUSTOMERS, A SIGN PRODUCED BY THE DEPARTMENT OF COMMUNITY
13 HEALTH THAT INCLUDES THE FOLLOWING STATEMENT:

14 "THE SALE OF ANY PRODUCT THAT CONTAINS ANY COMPOUND, MIXTURE,
15 OR PREPARATION CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR
16 PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER OF EPHEDRINE OR
17 PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE OR
18 PSEUDOEPHEDRINE TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY
19 LAW."

20 (8) IF THE SIGN REQUIRED UNDER SUBSECTION (7) IS MORE THAN 6
21 FEET FROM THE POINT OF SALE, IT SHALL BE 5-1/2 INCHES BY 8-1/2
22 INCHES AND THE STATEMENT REQUIRED UNDER SUBSECTION (7) SHALL BE
23 PRINTED IN 36-POINT BOLDFACED TYPE. IF THE SIGN REQUIRED UNDER
24 SUBSECTION (7) IS 6 FEET OR LESS FROM THE POINT OF SALE, IT SHALL
25 BE 2 INCHES BY 4 INCHES AND THE STATEMENT REQUIRED UNDER SUBSECTION
26 (7) SHALL BE PRINTED IN 20-POINT BOLDFACED TYPE.

27 (9) THE DEPARTMENT OF COMMUNITY HEALTH SHALL PRODUCE THE SIGN

1 REQUIRED UNDER SUBSECTION (7) AND MAKE COPIES OF THE SIGN AVAILABLE
2 FOR DISTRIBUTION TO LICENSED RETAILERS DESCRIBED IN SUBSECTION (1)
3 FREE OF CHARGE ON THE EFFECTIVE DATE OF THIS SECTION. LICENSED
4 RETAILERS DESCRIBED IN SUBSECTION (1) SHALL OBTAIN COPIES OF THE
5 SIGN FROM THE DEPARTMENT OF COMMUNITY HEALTH AND DISTRIBUTE THEM
6 FREE OF CHARGE, UPON REQUEST, TO PERSONS WHO ARE SUBJECT TO
7 SUBSECTION (7).

8 (10) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE PURSUANT TO
9 SUBSECTION (4) (A) THAT THE DEFENDANT HAD IN FORCE AT THE TIME OF
10 THE CITATION AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY FOR
11 EMPLOYEES TO PREVENT THE SALE OF PRODUCTS THAT CONTAIN ANY
12 COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY DETECTABLE
13 QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER
14 OF EPHEDRINE OR PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF
15 EPHEDRINE OR PSEUDOEPHEDRINE TO PERSONS UNDER 18 YEARS OF AGE AND
16 THAT THE DEFENDANT ENFORCED AND CONTINUES TO ENFORCE THE POLICY. A
17 DEFENDANT WHO PROPOSES TO OFFER EVIDENCE OF THE AFFIRMATIVE DEFENSE
18 DESCRIBED IN THIS SUBSECTION SHALL FILE AND SERVE NOTICE OF THE
19 DEFENSE, IN WRITING, UPON THE COURT AND THE PROSECUTING ATTORNEY.
20 THE NOTICE SHALL BE SERVED NOT LESS THAN 14 DAYS BEFORE THE HEARING
21 DATE.

22 (11) A PROSECUTING ATTORNEY WHO PROPOSES TO OFFER TESTIMONY TO
23 REBUT THE AFFIRMATIVE DEFENSE DESCRIBED IN SUBSECTION (10) SHALL
24 FILE AND SERVE A NOTICE OF REBUTTAL, IN WRITING, UPON THE COURT AND
25 THE DEFENDANT. THE NOTICE SHALL BE SERVED NOT LESS THAN 7 DAYS
26 BEFORE THE HEARING DATE AND SHALL CONTAIN THE NAME AND ADDRESS OF
27 EACH REBUTTAL WITNESS.

1 (12) ONE YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
2 THAT ADDED THIS SECTION, THE DEPARTMENT OF STATE POLICE SHALL
3 SUBMIT A WRITTEN REPORT TO THE LEGISLATURE REGARDING THE IMPACT AND
4 EFFECTIVENESS OF THE AMENDATORY ACT THAT ADDED THIS SECTION,
5 INCLUDING, BUT NOT LIMITED TO, THE NUMBER OF CLANDESTINE
6 METHAMPHETAMINE LAB INCIDENTS BEFORE AND AFTER THIS LEGISLATION.

7 (13) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, BEGINNING ON
8 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A
9 CITY, TOWNSHIP, VILLAGE, COUNTY, OTHER LOCAL UNIT OF GOVERNMENT, OR
10 POLITICAL SUBDIVISION OF THIS STATE SHALL NOT IMPOSE ANY NEW
11 REQUIREMENT OR PROHIBITION PERTAINING TO THE SALE OF A PRODUCT
12 DESCRIBED UNDER SUBSECTION (1). THIS SUBSECTION DOES NOT
13 INVALIDATE OR OTHERWISE RESTRICT A REQUIREMENT OR PROHIBITION
14 DESCRIBED IN THIS SUBSECTION EXISTING ON THE EFFECTIVE DATE OF THE
15 AMENDATORY ACT THAT ADDED THIS SECTION.

16 Enacting section 1. This amendatory act takes effect 6 months
17 after the date it is enacted.