



# HOUSE BILL No. 5709

March 26, 1996, Introduced by Reps. Hammerstrom, Martinez, Gire, Freeman, Gubow, Crissman, McManus, Brackenridge and Fitzgerald and referred to the Committee on Health Policy.

A bill to amend sections 17702, 17706, 17708, and 17709 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," sections 17702 and 17706 as amended by Act No. 304 of the Public Acts of 1986 and section 17708 as amended by Act No. 384 of the Public Acts of 1994, being sections 333.17702, 333.17706, 333.17708, and 333.17709 of the Michigan Compiled Laws; and to add section 17758.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 17702, 17706, 17708, and 17709 of Act  
2 No. 368 of the Public Acts of 1978, sections 17702 and 17706 as  
3 amended by Act No. 304 of the Public Acts of 1986 and section  
4 17708 as amended by Act No. 384 of the Public Acts of 1994, being  
5 sections 333.17702, 333.17706, 333.17708, and 333.17709 of the

1 Michigan Compiled Laws, are amended and section 17758 is added to  
2 read as follows:

3       Sec. 17702. (1) "Brand name" means the registered trademark  
4 name given to a drug product by its manufacturer.

5       (2) "CHARITABLE HEALTH CARE PROVIDER" MEANS A HEALTH PROFES-  
6 SIONAL LICENSED OR REGISTERED UNDER THIS ARTICLE, A HEALTH FACIL-  
7 ITY OR AGENCY LICENSED UNDER ARTICLE 17, OR OTHER HEALTH CARE  
8 PROVIDER THAT IS EXEMPT FROM FEDERAL TAXATION UNDER  
9 SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE AND THAT PROVIDES  
10 HEALTH CARE SERVICES TO THE PUBLIC, A SUBSTANTIAL PORTION OF  
11 WHICH ARE PROVIDED FREE OR AT A REDUCED FEE BASED UPON THE  
12 PATIENT'S ABILITY TO PAY.

13       (3) "CLASS OF TRADE" MEANS 1 OF THE FOLLOWING:

14       (A) THE INPATIENT DELIVERY OF PRESCRIPTION DRUGS IN A HEALTH  
15 FACILITY SETTING.

16       (B) THE RETAIL DELIVERY OF PRESCRIPTION DRUGS IN A COMPETI-  
17 TIVE RETAIL MARKETPLACE INCLUDING, BUT NOT LIMITED TO:

18       (i) THE RETAIL SALE OF PRESCRIPTION DRUGS BY A PHARMACY.

19       (ii) THE RETAIL SALE OF PRESCRIPTION DRUGS BY A MAIL ORDER  
20 PHARMACY.

21       (iii) THE RETAIL SALE OF PRESCRIPTION DRUGS BY A HEALTH  
22 FACILITY ON AN OUTPATIENT BASIS.

23       (4) ~~(2)~~ "Current selling price" means the retail price for  
24 a prescription drug which is available for sale from a pharmacy.

25       Sec. 17706. (1) "Manufacturer" means a person OTHER THAN A  
26 WHOLESALE DISTRIBUTOR who prepares, produces, derives,  
27 propagates, compounds, processes, packages, or repackages a drug

1 or device salable on prescription only, or otherwise changes the  
2 container or the labeling of a drug or device salable on pre-  
3 scription only, and who supplies, distributes, sells, offers for  
4 sale, barter, or otherwise disposes of that drug or device and  
5 any other drug or device salable on prescription only, to A PUR-  
6 CHASER OR another person for resale, compounding, or dispensing.

7 (2) "Official compendium" means the United States pharmaco-  
8 poeia and national formulary, homeopathic pharmacopoeia of the  
9 United States, or a supplement thereof existing on July 1, 1983.

10 Sec. 17708. (1) "Preceptor" means a pharmacist approved by  
11 the board to direct the training of an intern in an approved  
12 pharmacy.

13 (2) "Prescriber" means a licensed dentist, doctor of medi-  
14 cine, doctor of osteopathic medicine and surgery, doctor of podi-  
15 atric medicine and surgery, optometrist certified under part 174  
16 to administer and prescribe therapeutic pharmaceutical agents,  
17 veterinarian, or other licensed health professional acting under  
18 the delegation and using, recording, or otherwise indicating the  
19 name of the delegating licensed doctor of medicine or doctor of  
20 osteopathic medicine and surgery.

21 (3) "Prescription" means an order for drugs or devices writ-  
22 ten and signed or transmitted by other means of communication by  
23 a prescriber to be filled, compounded, or dispensed. Prescribing  
24 ~~shall be~~ IS limited to a prescriber. An order transmitted in  
25 other than written form shall be recorded or written and immedi-  
26 ately dated by the pharmacist, and that record constitutes the  
27 original prescription. In a health facility or other medical

1 institution an order for drugs or devices in the patient's chart  
2 constitutes for the purposes of this definition the original  
3 prescription.

4 (4) "Prescription drug" means ~~any~~ 1 OR MORE of the  
5 following:

6 (a) A drug dispensed pursuant to a prescription.

7 (b) A drug bearing the federal legend "CAUTION: federal law  
8 prohibits dispensing without prescription".

9 (c) A drug designated by the board as a drug that may only  
10 be dispensed pursuant to a prescription.

11 (5) "PURCHASER" MEANS A PERSON DOING BUSINESS IN THIS STATE  
12 THAT SELLS OR DISPENSES A PRESCRIPTION DRUG DIRECTLY TO A CON-  
13 SUMER OR WHO PAYS FOR A PRESCRIPTION DRUG RECEIVED BY A CONSUMER  
14 IN THIS STATE. PURCHASER DOES NOT INCLUDE 1 OR MORE OF THE  
15 FOLLOWING:

16 (A) THE DEPARTMENT OF VETERANS' AFFAIRS, THE DEPARTMENT OF  
17 DEFENSE, COVERED ENTITIES UNDER SECTION 256B(A)(4) OF THE PUBLIC  
18 HEALTH SERVICE ACT, AND ANY OTHER FEDERAL, STATE, OR LOCAL GOV-  
19 ERNMENT PROGRAM THAT DIRECTLY PROCURES PRESCRIPTION DRUGS.

20 (B) A HOSPITAL THAT PURCHASES PRESCRIPTION DRUGS FOR ITS OWN  
21 INPATIENT USE AND NOT FOR RESALE OR OUTPATIENT USE.

22 (C) A CHARITABLE HEALTH CARE PROVIDER THAT DOES NOT ISSUE,  
23 OFFER, OR ADMINISTER A HEALTH INSURANCE POLICY OR EMPLOYEE HEALTH  
24 BENEFIT PLAN.

25 Sec. 17709. (1) "SELLER" MEANS A PERSON WHO SELLS PRESCRIP-  
26 TION DRUGS TO PURCHASERS OR WHOLESALE DISTRIBUTORS, OR BOTH.

1 SELLER INCLUDES, BUT IS NOT LIMITED TO, A MANUFACTURER AND A  
2 WHOLESALE DISTRIBUTOR.

3 (2) ~~(1)~~ "Substitute" means to dispense, without the  
4 prescriber's authorization, a different drug in place of the drug  
5 prescribed.

6 (3) ~~(2)~~ "Wholesale distributor" means a person, other than  
7 a manufacturer, who supplies, distributes, sells, offers for  
8 sale, barter, or otherwise disposes of, to PURCHASERS OR other  
9 persons for resale, compounding, or dispensing, a drug or device  
10 salable on prescription only that the distributor has not pre-  
11 pared, produced, derived, propagated, compounded, processed,  
12 packaged, or repackaged, or otherwise changed the container or  
13 the labeling ~~thereof~~ OF THE DRUG OR DEVICE.

14 SEC. 17758. (1) A SELLER SHALL OFFER PRESCRIPTION DRUGS FOR  
15 SALE DURING THE SAME TIME PERIOD TO ALL PURCHASERS ON THE SAME  
16 TERMS AND CONDITIONS WHETHER THE SALE IS A DIRECT TRANSACTION  
17 BETWEEN A MANUFACTURER AND A PURCHASER OR ONE IN WHICH A MANUFAC-  
18 Turer SELLS TO A PURCHASER THROUGH A CONTRACTUAL ARRANGEMENT  
19 IMPLEMENTED BY 1 OR MORE WHOLESALE DISTRIBUTORS.

20 (2) THIS SECTION DOES NOT PROHIBIT A SELLER FROM OFFERING A  
21 PRICE REDUCTION OR OTHER SIMILAR PROGRAM AS LONG AS EACH IS MADE  
22 AVAILABLE TO ALL PURCHASERS ON THE SAME TERMS AND CONDITIONS  
23 INCLUDING 1 OR MORE OF THE FOLLOWING:

24 (A) PRICE REDUCTIONS JUSTIFIED BY ECONOMIES OR EFFICIENCIES  
25 REALIZED THROUGH VOLUME PURCHASERS.

26 (B) PRICE REDUCTIONS CONSISTING OF REBATES AVAILABLE THROUGH  
27 MARKET SHARE MOVEMENT AGREEMENTS.

1 (C) PRICE REDUCTIONS FOR PLACING PRESCRIPTION DRUGS ON A  
2 FORMULARY.

3 (D) PRICE REDUCTIONS FOR PROMPT PAYMENT.

4 (E) PRICE REDUCTIONS FOR LIMITED SITE DELIVERY.

5 (F) OPPORTUNITIES INVOLVING FREE MERCHANDISE AND COMPLIMEN-  
6 TARY STARTER DOSE DRUGS.

7 (3) A SELLER SHALL NOT PROVIDE PRICE REDUCTIONS OR OTHER  
8 SIMILAR PROGRAMS TO A PURCHASER BASED SOLELY ON THE CLASS OF  
9 TRADE TO WHICH THE PURCHASER BELONGS.

10 (4) A SELLER THAT VIOLATES THIS SECTION IS LIABLE FOR A  
11 CIVIL FINE OF NOT LESS THAN \$1,000.00 AND NOT MORE THAN  
12 \$50,000.00 FOR EACH VIOLATION. THE ATTORNEY GENERAL MAY BRING AN  
13 ACTION IN A COURT OF COMPETENT JURISDICTION TO ENFORCE THIS  
14 SECTION.

15 (5) A PURCHASER MAY BRING A CIVIL ACTION IN A COURT OF COM-  
16 PETENT JURISDICTION AGAINST A SELLER TO RECOVER TREBLE DAMAGES  
17 SUFFERED AS THE RESULT OF A VIOLATION OF THIS SECTION. PROOF OF  
18 A VIOLATION OF THIS SECTION CONSTITUTES PRIMA FACIE EVIDENCE OF  
19 DAMAGES.