



# SENATE BILL No. 1095

July 3, 1996, Introduced by Senator BERRYMAN and referred to the Committee on Judiciary.

A bill to amend sections 17766c and 17770 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 17766c as added by Act No. 38 of the Public Acts of 1994, being sections 333.17766c and 333.17770 of the Michigan Compiled Laws; and to add section 17766d.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Sections 17766c and 17770 of Act No. 368 of the  
2 Public Acts of 1978, section 17766c as added by Act No. 38 of the  
3 Public Acts of 1994, being sections 333.17766c and 333.17770 of  
4 the Michigan Compiled Laws, are amended and section 17766d is  
5 added to read as follows:

6 Sec. 17766c. (1) A person shall not possess more than ~~10~~  
7 2 grams of ephedrine, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
8 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE, alone OR

1 IN COMBINATION, or ~~in~~ a SUBSTANCE OR mixture CONTAINING  
2 EPHEDRINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF EPHEDRINE,  
3 OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE.

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

7 (3) This section does not apply to any of the following:

8 (a) A person who ~~possesses ephedrine pursuant to a license~~  
9 ~~issued~~ IS LICENSED, REGISTERED, OR OTHERWISE PERMITTED by this  
10 state or the United States to manufacture, ~~deliver~~ DISTRIBUTE,  
11 PRESCRIBE, dispense, ~~possess with intent to manufacture or~~  
12 ~~deliver, or possess~~ ADMINISTER, OR CONDUCT RESEARCH WITH a con-  
13 trolled substance, prescription drug, or other drug AND WHO POS-  
14 SESSES EPHEDRINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
15 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE IN CONNec-  
16 TION WITH THAT LICENSE, REGISTRATION, OR PERMISSION.

17 (b) An individual who possesses ephedrine, A SALT OF EPHED-  
18 RINE, AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL  
19 ISOMER OF EPHEDRINE pursuant to a prescription OR A RETAIL SALE  
20 PERMITTED UNDER SECTION 17766D.

21 (c) A person who possesses ephedrine, A SALT OF EPHEDRINE,  
22 AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
23 EPHEDRINE for retail sale IN COMPLIANCE WITH SECTION 17766D AND  
24 pursuant to a license issued ~~pursuant to~~ UNDER the general  
25 sales tax act, Act No. 167 of the Public Acts of 1933, being sec-  
26 tions 205.51 to 205.78 of the Michigan Compiled Laws.

1 (d) A person who possesses ephedrine, A SALT OF EPHEDRINE,  
2 AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
3 EPHEDRINE in the course of his or her business of selling or  
4 transporting ephedrine, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
5 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE to a  
6 person described in subdivision (a) or (c).

7 (e) A person who ~~in the course of his or her business,~~  
8 stores ephedrine, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
9 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE IN THE  
10 COURSE OF HIS OR HER BUSINESS for sale or distribution to a  
11 person described in subdivision (a), (c), or (d).

12 SEC. 17766D. (1) A PERSON SHALL NOT DELIVER A PRODUCT THAT  
13 CONTAINS EPHEDRINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
14 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE EXCEPT  
15 PURSUANT TO A PRESCRIPTION OR AS A DISPENSING PRESCRIBER OR VET-  
16 ERINARIAN ACTING IN THE SCOPE OF THAT PERSON'S PRACTICE.

17 (2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MIS-  
18 DEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A  
19 FINE OF NOT MORE THAN \$1,000.00, OR BOTH.

20 (3) SUBSECTION (1) DOES NOT APPLY TO ANY OF THE FOLLOWING:

21 (A) SUBJECT TO SUBSECTION (5), THE SALE BY A MANUFACTURER,  
22 WHOLESALE DISTRIBUTOR, OR RETAILER OF A PRODUCT DESCRIBED IN SUB-  
23 SECTION (1) IF THE PRODUCT MAY BE LAWFULLY SOLD OVER THE COUNTER  
24 WITHOUT A PRESCRIPTION UNDER THE FEDERAL ACT AND IF THE BOARD  
25 DETERMINES AFTER NOTICE AND A HEARING THAT THE PRODUCT IS BOTH OF  
26 THE FOLLOWING:

1 (i) LABELED AND MARKETED IN A MANNER CONSISTENT WITH THE  
2 APPLICABLE FOOD AND DRUG ADMINISTRATION RULES AND GUIDELINES  
3 CONCERNING OVER-THE-COUNTER PRODUCTS.

4 (ii) MANUFACTURED AND DISTRIBUTED FOR LEGITIMATE MEDICAL USE  
5 IN A MANNER THAT REDUCES OR ELIMINATES THE LIKELIHOOD OF ABUSE.

6 (B) EXCEPT AS PROVIDED IN SUBSECTION (4), THE SALE BY A MAN-  
7 UFACTURER, WHOLESALE DISTRIBUTOR, OR RETAILER OF 1 OR MORE OF THE  
8 FOLLOWING PRODUCTS:

9 BREATHE-AID  
10 BRONCARE  
11 BRONCHIAL CONGESTION  
12 BRONKAID TABLETS  
13 BRONKAID DUAL ACTION CAPLETS  
14 BRONKOTABS  
15 BRONKOLIXIR  
16 NEORESPIN  
17 PAZO HEMORRHOID OINTMENT OR SUPPOSITORIES  
18 PRIMATENE TABLETS  
19 PRIMATENE "DUAL ACTION" FORMULA  
20 QUELIDRINE  
21 RESP  
22 VATRONAL NOSE DROPS

23 (C) THE DELIVERY OF A PRODUCT DESCRIBED IN SUBSECTION (1) TO  
24 A PERSON LICENSED, REGISTERED, OR OTHERWISE PERMITTED BY THIS  
25 STATE OR THE UNITED STATES TO MANUFACTURE, DISTRIBUTE, PRESCRIBE,  
26 DISPENSE, ADMINISTER, OR CONDUCT RESEARCH WITH A CONTROLLED

1 SUBSTANCE, PRESCRIPTION DRUG, OR OTHER DRUG, IN CONNECTION WITH  
2 THAT LICENSE, REGISTRATION, OR PERMISSION.

3 (4) THE BOARD MAY REMOVE THE EXEMPTION OF A PRODUCT EXEMPTED  
4 OR LISTED IN SUBSECTION (3) IF THE BOARD DETERMINES AFTER NOTICE  
5 AND A HEARING THAT THE PRODUCT DOES NOT MEET THE CRITERIA OF SUB-  
6 SECTION (3)(A)(i) AND (ii).

7 (5) IN DETERMINING WHETHER TO EXEMPT A PRODUCT UNDER SUBSEC-  
8 TION (3), THE BOARD SHALL CONSIDER ALL OF THE FOLLOWING:

9 (A) THE MANNER OF PACKAGING THE PRODUCT, INCLUDING THE PACK-  
10 AGE SIZE.

11 (B) THE PRODUCT'S NAME AND LABELING.

12 (C) THE MANNER OF DISTRIBUTING, ADVERTISING, AND PROMOTING  
13 THE PRODUCT.

14 (D) THE DURATION, SCOPE, AND SIGNIFICANCE OF ABUSE OF THE  
15 PRODUCT.

16 (E) THE NEED TO PROVIDE MEDICALLY IMPORTANT THERAPIES CON-  
17 TAINING EPHEDRINE, ITS SALTS OR OPTICAL ISOMERS, OR SALTS OF ITS  
18 OPTICAL ISOMERS TO THE PUBLIC ON AN OVER-THE-COUNTER BASIS FOR  
19 INDICATIONS APPROVED BY THE FOOD AND DRUG ADMINISTRATION.

20 (F) OTHER FACTS OR CONSIDERATIONS THE BOARD DETERMINES ARE  
21 RELEVANT TO AND CONSISTENT WITH THE PUBLIC HEALTH AND SAFETY.

22 (6) NOT LESS THAN ONCE A YEAR, THE BOARD SHALL PUBLISH A  
23 LIST OF PRODUCTS EXEMPTED UNDER SUBSECTION (3)(A) OR FOR WHICH  
24 THE BOARD HAS REMOVED AN EXEMPTION UNDER SUBSECTION (4).

25 (7) AS USED IN THIS SECTION:

26 (A) "DELIVER" OR "DELIVERY" MEANS THE ACTUAL OR CONSTRUCTIVE  
27 TRANSFER OR ATTEMPTED TRANSFER OF A PRODUCT DESCRIBED IN

1 SUBSECTION (1) FROM 1 PERSON TO ANOTHER, WHETHER OR NOT THERE IS  
2 AN AGENCY RELATIONSHIP.

3 (B) "RETAILER" MEANS A PERSON WHO MAKES RETAIL SALES PURSU-  
4 ANT TO A LICENSE ISSUED UNDER THE GENERAL SALES TAX ACT, ACT  
5 NO. 167 OF THE PUBLIC ACTS OF 1933, BEING SECTIONS 205.51 TO  
6 205.78 OF THE MICHIGAN COMPILED LAWS.

7 Sec. 17770. Except as to the labeling of poisonous or dele-  
8 terious drugs and to adulterating, misbranding, and substituting,  
9 this part ~~shall~~ DOES not apply TO ANY OF THE FOLLOWING:

10 (a) ~~To the~~ THE sale of paris green, white hellebore, ~~and~~  
11 OR other insecticides.

12 (b) ~~To the~~ THE sale of any substance for use in the arts.

13 (c) ~~To the~~ EXCEPT AS PROVIDED IN SECTION 17766D, THE  
14 retailing of ~~non-narcotic,~~ A NONNARCOTIC or nonprescription  
15 medicine or drug ~~which~~ THAT is prepackaged, fully prepared by  
16 the manufacturer or producer for use by the consumer, and labeled  
17 in accordance with the requirements of ~~the state~~ THIS ACT and  
18 THE federal act.

19 (d) ~~To the~~ THE sale by merchants of ammonia, sulphur,  
20 ~~any~~ nonpoisonous flavoring essences or extracts, salt, bicar-  
21 bonate of soda, or other prepackaged common household remedies or  
22 any food or food product ~~which~~ THAT may ~~also~~ be found in any  
23 of the official compendiums and is not also considered ~~as~~ a  
24 poisonous, deleterious, or habit forming drug.

25 (e) ~~To surgical~~ SURGICAL or dental instruments and acces-  
26 sories, hearing aids, gases, oxygen tents, gas pressure reducing  
27 regulators, x-ray apparatus, therapeutic lamps, splints, ~~and~~ OR

1 stethoscopes ~~and~~ and ~~their~~ component parts and accessories OF  
2 THOSE ITEMS, or ~~to~~ equipment, instruments, apparatus, and con-  
3 trivances used to render the articles effective in medical, sur-  
4 gical, or dental treatment, ~~or~~ or ~~to~~ articles intended for  
5 external use.

6 (f) ~~To articles~~ ARTICLES or substances intended for gener-  
7 ally recognized mechanical, agricultural, horticultural, or  
8 industrial consumption or use or photographic chemicals for home  
9 use.