

**SENATE BILL NO. 868**

February 10, 1998, Introduced by Senators BERRYMAN and SCHWARZ and referred to the Committee on Health Policy and Senior Citizens.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 17766c and 17770 (MCL 333.17766c and 333.17770), section 17766c as added by 1994 PA 38, and by adding section 17766d.

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

1       Sec. 17766c. (1) A person shall not possess more than ~~10~~  
2 2 grams of ephedrine, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF  
3 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE, alone OR  
4 IN COMBINATION, or ~~in~~ a SUBSTANCE OR mixture CONTAINING EPHED-  
5 RINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF EPHEDRINE, OR A  
6 SALT OF AN OPTICAL ISOMER OF EPHEDRINE.

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

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

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

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

15 (c) A person who possesses ephedrine, A SALT OF EPHEDRINE,  
16 AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
17 EPHEDRINE for ~~retail~~ sale ~~pursuant to a license issued pursu-~~  
18 ~~ant to~~ AT RETAIL SUBJECT TO THE TAX LEVIED UNDER the general  
19 sales tax act, ~~Act No. 167 of the Public Acts of 1933, being~~  
20 ~~sections 205.51 to 205.78 of the Michigan Compiled Laws~~ 1933 PA  
21 167, MCL 205.51 TO 205.78, THAT IS IN COMPLIANCE WITH SECTION  
22 17766D.

23 (d) A person who possesses ephedrine, A SALT OF EPHEDRINE,  
24 AN OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
25 EPHEDRINE in the course of his or her business of selling or  
26 transporting ephedrine, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF

1 EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE to a  
2 person described in subdivision (a) or (c).

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

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

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

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

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

23 (i) LABELED AND MARKETED IN A MANNER CONSISTENT WITH THE  
24 APPLICABLE FOOD AND DRUG ADMINISTRATION RULES AND GUIDELINES CON-  
25 CERNING OVER-THE-COUNTER PRODUCTS.

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

1 (B) EXCEPT AS PROVIDED IN SUBSECTION (4), THE SALE BY A  
2 MANUFACTURER, WHOLESALE DISTRIBUTOR, OR RETAILER OF 1 OR MORE OF  
3 THE FOLLOWING PRODUCTS:

- 4 (i) BREATHE-AID.
- 5 (ii) BRONCARE.
- 6 (iii) BRONCHIAL CONGESTION.
- 7 (iv) BRONKAID TABLETS.
- 8 (v) BRONKAID DUAL ACTION CAPLETS.
- 9 (vi) BRONKOTABS.
- 10 (vii) BRONKOLIXIR.
- 11 (viii) NEORESPIN.
- 12 (ix) PAZO HEMORRHOID OINTMENT OR SUPPOSITORIES.
- 13 (x) PRIMATENE TABLETS.
- 14 (xi) PRIMATENE "DUAL ACTION" FORMULA.
- 15 (xii) QUELIDRINE.
- 16 (xiii) RESP.
- 17 (xiv) VATRONAL NOSE DROPS.

18 (C) THE DELIVERY OF A PRODUCT DESCRIBED IN SUBSECTION (1) TO  
19 A PERSON LICENSED, REGISTERED, OR OTHERWISE PERMITTED BY THIS  
20 STATE OR THE UNITED STATES TO MANUFACTURE, DISTRIBUTE, PRESCRIBE,  
21 DISPENSE, ADMINISTER, OR CONDUCT RESEARCH WITH A CONTROLLED SUB-  
22 STANCE, PRESCRIPTION DRUG, OR OTHER DRUG, IN CONNECTION WITH THAT  
23 LICENSE, REGISTRATION, OR PERMISSION.

24 (4) THE BOARD MAY REMOVE THE EXEMPTION OF A PRODUCT EXEMPTED  
25 OR LISTED IN SUBSECTION (3) IF THE BOARD DETERMINES AFTER NOTICE  
26 AND A HEARING THAT THE PRODUCT DOES NOT MEET THE CRITERIA OF  
27 SUBSECTION (3)(A)(i) AND (ii).

1 (5) IN DETERMINING WHETHER TO EXEMPT A PRODUCT UNDER  
2 SUBSECTION (3), THE BOARD SHALL CONSIDER ALL OF THE FOLLOWING:

3 (A) THE MANNER OF PACKAGING THE PRODUCT, INCLUDING THE PACK-  
4 AGE SIZE.

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

6 (C) THE MANNER OF DISTRIBUTING, ADVERTISING, AND PROMOTING  
7 THE PRODUCT.

8 (D) THE DURATION, SCOPE, AND SIGNIFICANCE OF ABUSE OF THE  
9 PRODUCT.

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

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

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

19 (7) AS USED IN THIS SECTION:

20 (A) "DELIVER" OR "DELIVERY" MEANS THE ACTUAL OR CONSTRUCTIVE  
21 TRANSFER OR ATTEMPTED TRANSFER OF A PRODUCT DESCRIBED IN SUBSEC-  
22 TION (1) FROM 1 PERSON TO ANOTHER, WHETHER OR NOT THERE IS AN  
23 AGENCY RELATIONSHIP.

24 (B) "RETAILER" MEANS A PERSON WHO MAKES SALES AT RETAIL  
25 SUBJECT TO THE TAX LEVIED UNDER THE GENERAL SALES TAX ACT, 1933  
26 PA 167, MCL 205.51 TO 205.78.

1           Sec. 17770. Except as to the labeling of poisonous or  
2 deleterious drugs and to adulterating, misbranding, and  
3 substituting, this part ~~shall~~ DOES not apply TO ANY OF THE  
4 FOLLOWING:

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

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

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

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

20           (e) ~~To surgical~~ SURGICAL or dental instruments and acces-  
21 sories, hearing aids, gases, oxygen tents, gas pressure reducing  
22 regulators, x-ray apparatus, therapeutic lamps, splints, ~~and~~ OR  
23 stethoscopes ~~,~~ and ~~their~~ component parts and accessories OF  
24 THOSE ITEMS, or ~~to~~ equipment, instruments, apparatus, and con-  
25 trivances used to render the articles effective in medical, sur-  
26 gical, or dental treatment, ~~+~~ or ~~to~~ articles intended for  
27 external use.

1 (f) ~~To articles~~ ARTICLES or substances intended for  
2 generally recognized mechanical, agricultural, horticultural, or  
3 industrial consumption or use or photographic chemicals for home  
4 use.