

September 28, 1999

REPRINT
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 182

(As passed the House, September 28, 1999)

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7208, 7220, 7227, and 7408a (MCL 333.7208,
333.7220, 333.7227, and 333.7408a), section 7408a as amended by
1999 PA 74, and by adding section 7339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7208. (1) Authority to control under this article —,
2 does not extend to distilled spirits, wine, malt beverages, or
3 tobacco.

4 (2) ~~The~~ EXCEPT AS PROVIDED IN SECTION 7220(1)(C), THE
5 administrator shall exclude a nonnarcotic substance from a sched-
6 ule if the substance, under the federal food, drug, and cosmetic
7 act of 1938, 21 U.S.C. 301 to 392, and the laws of this state,
8 may be lawfully sold over the counter without a prescription.

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1 Sec. 7220. (1) The following controlled substances are
2 included in schedule 5:

3 (a) The following drugs and other substances, by whatever
4 official name, common or usual name, chemical name, or brand name
5 designated:

6 Loperamide

7 (b) Any compound, mixture, or preparation containing any of
8 the following limited quantities of narcotic drugs or salts
9 ~~thereof~~ OF NARCOTIC DRUGS, which includes 1 or more nonnarcotic
10 active medicinal ingredients in sufficient proportion to confer
11 upon the compound, mixture, or preparation valuable medicinal
12 qualities other than those possessed by the narcotic drug alone:
13 ~~, is included in schedule 5:-~~

14 (i) Not more than 200 milligrams of codeine, or any of its
15 salts, per 100 milliliters or per 100 grams and not more than 10
16 milligrams per dosage unit.

17 (ii) Not more than 100 milligrams of dihydrocodeine, or any
18 of its salts, per 100 milliliters or per 100 grams and not more
19 than 5 milligrams per dosage unit.

20 (iii) Not more than 100 milligrams of ethylmorphine, or any
21 of its salts, per 100 milliliters or per 100 grams and not more
22 than 5 milligrams per dosage unit.

23 (iv) Not more than 2.5 milligrams of diphenoxylate and not
24 less than 25 micrograms of atropine sulfate per dosage unit.

25 (v) Not more than 100 milligrams of opium per 100 millili-
26 ters or per 100 grams and not more than 5 milligrams per dosage
27 unit.

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1 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,
2 EPHEDRINE, A SALT OF EPHEDRINE, AN OPTICAL ISOMER OF EPHEDRINE, A
3 SALT OF AN OPTICAL ISOMER OF EPHEDRINE, OR A COMPOUND, MIXTURE,
4 OR PREPARATION CONTAINING EPHEDRINE, A SALT OF EPHEDRINE, AN
5 OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF
6 EPHEDRINE. HOWEVER, THE FOLLOWING ARE NOT INCLUDED IN
7 SCHEDULE 5:

8 (i) A PRODUCT CONTAINING EPHEDRINE, A SALT OF EPHEDRINE, AN
9 OPTICAL ISOMER OF EPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF
10 EPHEDRINE IF THE DRUG PRODUCT MAY LAWFULLY BE SOLD OVER THE
11 COUNTER WITHOUT A PRESCRIPTION UNDER FEDERAL LAW, IS LABELED AND
12 MARKETING IN A MANNER CONSISTENT WITH THE PERTINENT OTC TENTATIVE
13 FINAL OR FINAL MONOGRAPH, IS MANUFACTURED AND DISTRIBUTED FOR
14 LEGITIMATE MEDICAL USE IN A MANNER THAT REDUCES OR ELIMINATES THE
15 LIKELIHOOD FOR ABUSE, AND IS NOT MARKETING, ADVERTISED, OR LABELED
16 FOR AN INDICATION OF STIMULATION, MENTAL ALERTNESS, ENERGY,
17 WEIGHT LOSS, APPETITE CONTROL, OR MUSCLE ENHANCEMENT AND IF THE
18 DRUG PRODUCT IS 1 OF THE FOLLOWING:

19 (A) A SOLID DOSAGE FORM, INCLUDING BUT NOT LIMITED TO A SOFT
20 GELATIN CAPLET, THAT COMBINES AS ACTIVE INGREDIENTS NOT LESS THAN
21 400 MILLIGRAMS OF GUAIFENESIN AND NOT MORE THAN 25 MILLIGRAMS OF
22 EPHEDRINE PER DOSE, PACKAGED IN BLISTER PACKS WITH NOT MORE THAN
23 2 TABLETS OR CAPLETS PER BLISTER.

24 (B) AN ANORECTAL PREPARATION CONTAINING NOT MORE THAN 5%
25 EPHEDRINE.

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1 (ii) A FOOD PRODUCT OR A DIETARY SUPPLEMENT CONTAINING
2 EPHEDRINE, IF THE FOOD PRODUCT OR DIETARY SUPPLEMENT MEETS ALL OF
3 THE FOLLOWING CRITERIA:

4 (A) IT CONTAINS, PER DOSAGE UNIT OR SERVING, NOT MORE THAN
5 THE LESSER OF 25 MILLIGRAMS OF EPHEDRINE ALKALOIDS OR THE MAXIMUM
6 AMOUNT OF EPHEDRINE ALKALOIDS PROVIDED IN APPLICABLE REGULATIONS
7 ADOPTED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND
8 CONTAINS NO OTHER CONTROLLED SUBSTANCE.

9 (B) IT CONTAINS NO HYDROCHLORIDE OR SULFATE SALTS OF EPHED-
10 RINE ALKALOIDS.

11 (C) IT IS PACKAGED WITH A PROMINENT LABEL SECURELY AFFIXED
12 TO EACH PACKAGE THAT STATES THE AMOUNT IN MILLIGRAMS OF EPHEDRINE
13 IN A SERVING OR DOSAGE UNIT; THE AMOUNT OF THE FOOD PRODUCT OR
14 DIETARY SUPPLEMENT THAT CONSTITUTES A SERVING OR DOSAGE UNIT;
15 THAT THE MAXIMUM RECOMMENDED DOSAGE OF EPHEDRINE FOR A HEALTHY
16 ADULT HUMAN IS THE LESSER OF 100 MILLIGRAMS IN A 24-HOUR PERIOD
17 OR THE MAXIMUM RECOMMENDED DOSAGE OR PERIOD OF USE PROVIDED IN
18 APPLICABLE REGULATIONS ADOPTED BY THE UNITED STATES FOOD AND DRUG
19 ADMINISTRATION; AND THAT IMPROPER USE OF THE PRODUCT MAY BE HAZ-
20 ARDOUS TO A PERSON'S HEALTH.

21 (2) INCLUSION OF THE SUBSTANCES DESCRIBED IN SUBSECTION
22 (1)(C) INTO SCHEDULE 5 DOES NOT PRECLUDE PROSECUTION FOR A CRIME
23 INVOLVING THOSE SCHEDULE 5 SUBSTANCES UNDER SECTION 17766C.

24 Sec. 7227. (1) A nonnarcotic substance ~~which~~ THAT under
25 the federal food, drug and cosmetic act may be lawfully dispensed
26 without a prescription is excluded from all schedules pursuant to
27 section 7208(2). A substance ~~which~~ THAT contains 1 or more

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1 controlled substances in ~~such~~ a proportion or concentration to
2 vitiate the potential for abuse is excluded.

3 (2) ~~The following substances are excluded from all sched-~~
4 ~~ules of controlled substances:~~ SUBSTANCES INCLUDED IN SCHEDULE 5
5 UNDER SECTION 7220(1)(C) ARE NOT EXCLUDED UNDER SUBSECTION (1).

6 ~~Amodrine~~ ~~Tedral anti-H~~

7 ~~Bronkaid~~ ~~Tedral one-half strength~~

8 ~~Bronkolixir~~ ~~Tedral pediatric suspension~~

9 ~~Bronkotabs~~ ~~Tedral suppositories double strength~~

10 ~~Beckman buffer B-1~~ ~~Tedral suppositories regular strength~~

11 ~~Beckman buffer B-2~~ ~~Verequad tablet~~

12 ~~Primatene~~ ~~Verequad suspension~~

13 ~~Tedral~~

14 (3) ~~A preparation of similar quantitative composition or~~
15 ~~which is the same except that it contains a lesser quantity of a~~
16 ~~controlled substance or a substance which does not have a stimu-~~
17 ~~lant, depressant, or hallucinogenic effect and which may be dis-~~
18 ~~persed without a prescription, is excluded from all schedules.~~

19 (3) ~~(4)~~ An excluded substance is a deleterious drug and
20 may be manufactured, distributed, or dispensed only by a person
21 who is registered to manufacture, distribute, or dispense a con-
22 trolled substance under section 7208(2).

23 SEC. 7339. (1) A PERSON SHALL NOT DISPENSE, SELL, OR OTHER-
24 WISE GIVE A PRODUCT DESCRIBED IN SECTION 7220(1)(C)(ii) TO AN
25 INDIVIDUAL LESS THAN 18 YEARS OF AGE. THIS SECTION DOES NOT
26 APPLY TO A PHYSICIAN OR PHARMACIST WHO PRESCRIBES, DISPENSES,
27 ADMINISTERS, OR DELIVERS A PRODUCT DESCRIBED IN

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1 SECTION 7220(1)(C)(*ii*) TO AN INDIVIDUAL LESS THAN 18 YEARS OF
2 AGE, TO A PARENT OR GUARDIAN OF AN INDIVIDUAL LESS THAN 18 YEARS
3 OF AGE WHO DELIVERS THE PRODUCT TO THE INDIVIDUAL, OR TO A PERSON
4 AUTHORIZED BY THE INDIVIDUAL'S PARENT OR LEGAL GUARDIAN WHO DIS-
5 PENSES OR DELIVERS THE PRODUCT TO THE INDIVIDUAL.

6 (2) IN THE COURSE OF SELLING, OFFERING FOR SALE, OR OTHER-
7 WISE DISTRIBUTING A PRODUCT DESCRIBED IN SECTION 7220(1)(C)(*ii*),
8 A PERSON SHALL NOT ADVERTISE OR REPRESENT IN ANY MANNER THAT THE
9 PRODUCT CAUSES EUPHORIA, ECSTASY, A "BUZZ" OR "HIGH", OR AN
10 ALTERED MENTAL STATE, HEIGHTENS SEXUAL PERFORMANCE, OR, BECAUSE
11 IT CONTAINS EPHEDRINE ALKALOIDS, INCREASES MUSCLE MASS.

12 (3) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDE-
13 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A
14 FINE OF NOT MORE THAN \$100.00, OR BOTH.

15 Sec. 7408a. (1) As part of the sentence or juvenile dispo-
16 sition for an attempt to violate, a conspiracy to violate, or a
17 violation of this part or section 17766a or of a local ordinance
18 that prohibits conduct prohibited under this part or
19 section 17766a, the court shall consider all prior convictions
20 currently entered upon the criminal history record and Michigan
21 driving record of the person, except those convictions which,
22 upon motion of the defendant, are determined by the court to be
23 constitutionally invalid, and, subject to subsection ~~-(12)-~~ (11),
24 shall impose the following licensing sanctions in addition to any
25 other penalty or sanction imposed for the violation:

26 (a) If the court finds that the person does not have a prior
27 conviction within 7 years of the violation, the court shall order

1 the secretary of state to suspend the operator's or chauffeur's
2 license of the person for 6 months. If the court finds compel-
3 ling circumstances under subsection (8) sufficient to warrant the
4 issuance of a restricted license, the court may order the secre-
5 tary of state to issue to the person a restricted license during
6 all or a specified portion of the period of suspension, except
7 that a restricted license shall not be issued during the first
8 30 days of the period of suspension.

9 (b) If the court finds that the person has 1 or more prior
10 convictions within 7 years of the violation, the court shall
11 order the secretary of state to suspend the operator's or
12 chauffeur's license of the person for 1 year. If the court finds
13 compelling circumstances under subsection (8) sufficient to war-
14 rant the issuance of a restricted license, the court may order
15 the secretary of state to issue to the person a restricted
16 license during all or any portion of the period of suspension,
17 except that a restricted license shall not be issued during the
18 first 60 days of the period of suspension.

19 (2) The person whose operator's or chauffeur's license is
20 ordered suspended under this section shall immediately surrender
21 his or her operator's or chauffeur's license to the court. The
22 court shall immediately destroy the license and forward an
23 abstract of conviction with court-ordered license sanctions to
24 the secretary of state. Upon receipt of, and pursuant to, the
25 abstract of conviction with court-ordered license sanctions, the
26 secretary of state shall suspend the person's license and, if
27 ordered by the court and if the person is otherwise eligible for

1 a license, issue to the person a restricted license stating the
2 limited driving privileges indicated on the abstract. If the
3 judgment is appealed to circuit court, the court may, ex parte,
4 order the secretary of state to stay the suspension or license
5 restriction issued under this section pending the outcome of the
6 appeal.

7 (3) Except as otherwise provided in subsection (5), before
8 imposing sentence or entering a juvenile disposition, other than
9 court-ordered license sanctions under this section, for an
10 attempt to violate, a conspiracy to violate, or a violation of
11 this part or section 17766a or of a local ordinance that prohib-
12 its conduct prohibited under this part or section 17766a, the
13 court may order the person to undergo screening and assessment by
14 a person or agency as designated by the office of substance abuse
15 services, to determine whether the person is likely to benefit
16 from rehabilitative services, including alcohol or drug education
17 and alcohol or drug treatment programs. The person shall pay for
18 the costs of the screening and assessment services.

19 (4) Except as otherwise provided in subsection (5), as part
20 of the sentence or juvenile disposition for an attempt to vio-
21 late, a conspiracy to violate, or a violation of this part or
22 section 17766a or of a local ordinance that prohibits conduct
23 prohibited under this part or section 17766a, the court may order
24 the person to do 1 or both of the following:

25 (a) Perform service to the community for not more than 90
26 days. A person ordered to perform service to the community under
27 this subdivision shall not receive compensation, and shall

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1 reimburse the state or appropriate local unit of government for
2 the cost of supervision incurred by the state or local unit of
3 government as a result of the person's activities in that
4 service.

5 (b) Participate in and successfully complete 1 or more
6 appropriate rehabilitative programs. The person shall pay for
7 the costs of the rehabilitative services.

8 (5) Subsections (3) and (4) do not apply to a person who is
9 not eligible for probation under chapter XI of the code of crimi-
10 nal procedure, 1927 PA 175, MCL 777.1 to 777.14a.

11 (6) A restricted license issued in compliance with an order
12 under this section shall permit the person to whom it is issued
13 to drive under the following circumstances:

14 (a) In the course of the person's employment or occupation.

15 (b) To and from any combination of the following:

16 (i) The person's residence.

17 (ii) The person's work location.

18 (iii) An alcohol or drug education or treatment program as
19 ordered by the court.

20 (iv) The court probation department.

21 (v) A court-ordered community service program.

22 (vi) An educational institution at which the person is
23 enrolled as a student.

24 (vii) A place of regularly occurring medical treatment for a
25 serious condition for the person or a member of the person's
26 household or immediate family.

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1 (7) The court shall not order the secretary of state under
2 this section to issue a restricted license that would permit a
3 person to operate a commercial motor vehicle that hauls hazardous
4 material.

5 (8) The court shall not order the secretary of state under
6 this section to issue a restricted license unless the person
7 states under oath, and the court finds by testimony taken in open
8 court or by statements contained in a sworn affidavit on a form
9 prescribed by the state court administrator, that both of the
10 following apply:

11 (a) The person needs vehicular transportation to and from
12 his or her work location, place of alcohol or drug education
13 treatment, court probation department, court-ordered community
14 service program, or educational institution, or in the course of
15 the person's employment or occupation.

16 (b) The person is unable to take public transportation and
17 does not have any family members or other individual able to pro-
18 vide transportation to a destination or for a purpose described
19 in subdivision (a).

20 ~~—(9) The court order issued under this section and the~~
21 ~~restricted license shall indicate the permitted destinations of~~
22 ~~the person or the permitted purposes for which the person may~~
23 ~~operate a vehicle, the approved route or routes if specified by~~
24 ~~the court, and permitted times of travel.—~~

25 (9) ~~—(10)—~~ Regardless of a court order issued under this
26 section, the secretary of state shall not issue a restricted
27 license to a person whose license is suspended under this section

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1 unless a restricted license is authorized under this section and
2 the person is otherwise eligible for a license.

3 (10) ~~—(11)—~~ While driving, the person shall carry proof of
4 his or her destination and the hours of any employment, class, or
5 other reason for traveling and shall display that proof upon a
6 peace officer's request.

7 (11) ~~—(12)—~~ A court shall not order the suspension of a
8 person's license if the person is sentenced to life imprisonment
9 or to a minimum term of imprisonment that exceeds 1 year for an
10 attempt to violate, a conspiracy to violate, or a violation of
11 part 74 or section 17766a.

12 (12) ~~—(13)—~~ The court shall do both of the following:

13 (a) Transmit a record of each order issued under this sec-
14 tion to the secretary of state.

15 (b) Forward to the department of state police, on a form or
16 forms prescribed by the state court administrator, a record that
17 specifies the penalties imposed by the court for an offense
18 described in subsection (1), including a licensing sanction
19 ordered under this section and a term of imprisonment imposed for
20 the offense.

21 (13) ~~—(14)—~~ Except as otherwise provided by law, a record
22 described in subsection ~~—(13)—~~ (12) is a public record, and the
23 department of state police shall retain the information contained
24 in that record for not less than 7 years.

25 (14) ~~—(15)—~~ As used in this section:

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1 (a) "Commercial motor vehicle" means that term as defined in
2 section 7a of the Michigan vehicle code, 1949 PA 300,
3 MCL 257.7a.

4 (b) "Conviction" means a final conviction, a plea of guilty
5 or nolo contendere if accepted by the court, a finding of guilt,
6 a probate court disposition, or a juvenile adjudication, for a
7 criminal law violation, regardless of whether the penalty is
8 rebated or suspended.

9 (c) "Hazardous material" means that term as defined in
10 section 19b of 1949 PA 300, MCL 257.19b.

11 (d) "Juvenile disposition" means either of the following:

12 (i) A finding of juvenile delinquency under chapter 403 of
13 title 18 of the United States Code, 18 U.S.C. 5031 to 5040 and
14 5042.

15 (ii) The entry of a judgment or order of disposition by a
16 court of another state that states or is based upon a finding
17 that a juvenile violated a law of another state that would have
18 been a criminal offense if committed by an adult in that state.

19 (e) "Law of another state" means a law or ordinance enacted
20 by another state or by a local unit of government in another
21 state.

22 (f) "Office of substance abuse services" means the agency
23 created by section 6201.

24 (g) "Prior conviction" means either of the following:

25 (i) A conviction for an attempt to violate, a conspiracy to
26 violate, or a violation of part 74 or section 17766a, a local
27 ordinance that prohibits conduct prohibited under part 74 or

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1 section 17766a, or a law of another state that prohibits conduct
2 prohibited under part 74 or section 17766a.

3 (ii) A conviction for an attempt to violate, a conspiracy to
4 violate, or a violation of the controlled substances act, title
5 II of the comprehensive drug abuse prevention and control act of
6 1970, Public Law 91-513, 84 Stat. 1242.

7 (h) "Probate court disposition" means the entry of a probate
8 court order of disposition for a child found to be within the
9 provisions of chapter XIIIA of the probate code of 1939, 1939
10 PA 288, MCL 712A.1 to 712A.28.

11 (i) "Work location" means, as applicable, either the spe-
12 cific place or places of employment, or the territory or territo-
13 ries regularly visited by the person in pursuance of the person's
14 occupation, or both.

15 Enacting section 1. This amendatory act takes effect 90
16 days after the date this amendatory act is enacted.