

SUBSTITUTE FOR  
HOUSE BILL NO. 4322

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 17766F. (1) A PERSON WHO POSSESSES PRODUCTS THAT CONTAIN  
2    ANY COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY DETECTABLE  
3    QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER  
4    OF EPHEDRINE OR PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
5    EPHEDRINE OR PSEUDOEPHEDRINE FOR RETAIL SALE PURSUANT TO A LICENSE  
6    ISSUED UNDER THE GENERAL SALES TAX ACT, 1933 PA 167, MCL 205.51 TO  
7    205.78, SHALL NOT KNOWINGLY DO ANY OF THE FOLLOWING:  
8        (A) SELL ANY PRODUCT DESCRIBED UNDER THIS SUBSECTION TO AN  
9    INDIVIDUAL UNDER 18 YEARS OF AGE.

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

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

7 (2) THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

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

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

12 (C) A PRODUCT THAT THE STATE BOARD OF PHARMACY, UPON  
13 APPLICATION OF A MANUFACTURER OR CERTIFICATION BY THE UNITED STATES  
14 DRUG ENFORCEMENT ADMINISTRATION AS INCONVERTIBLE, EXEMPTS FROM THIS  
15 SECTION BECAUSE THE PRODUCT HAS BEEN FORMULATED IN SUCH A WAY AS TO  
16 EFFECTIVELY PREVENT THE CONVERSION OF THE ACTIVE INGREDIENT INTO  
17 METHAMPHETAMINE.

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

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

24 (4) A PERSON DESCRIBED UNDER SUBSECTION (1) SHALL POST, IN A  
25 PLACE CLOSE TO THE POINT OF SALE AND CONSPICUOUS TO BOTH EMPLOYEES  
26 AND CUSTOMERS, A SIGN PRODUCED BY THE DEPARTMENT OF COMMUNITY  
27 HEALTH THAT INCLUDES THE FOLLOWING STATEMENT:

House Bill No. 4322 (H-1) as amended June 7, 2005

1 "THE SALE OF ANY PRODUCT THAT CONTAINS ANY COMPOUND, MIXTURE,  
2 OR PREPARATION CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR  
3 PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER OF EPHEDRINE OR  
4 PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE OR  
5 PSEUDOEPHEDRINE TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY  
6 LAW. IN ORDER TO PURCHASE A PRODUCT DESCRIBED ABOVE, YOU MUST  
7 PROVIDE THE RETAILER WITH AN OFFICIAL MICHIGAN OPERATOR'S OR  
8 CHAUFFEUR'S LICENSE, AN OFFICIAL MICHIGAN PERSONAL IDENTIFICATION  
9 CARD, OR ANY OTHER BONA FIDE PICTURE IDENTIFICATION WHICH  
10 ESTABLISHES THE IDENTITY AND AGE OF THE INDIVIDUAL. THE RETAILER  
11 MAY REQUIRE YOU TO SIGN A LOG OR OTHER TYPE OF RECORD DETAILING THE  
12 SALE OF THAT PRODUCT. STATE LAW FURTHER PROHIBITS IN A SINGLE OVER-  
13 THE-COUNTER TRANSACTION THE SALE OF MORE THAN 2 PACKAGES, OR 48  
14 TABLETS OR CAPSULES, OF ANY PRODUCT DESCRIBED ABOVE."

15 (5) IF THE SIGN REQUIRED UNDER SUBSECTION (4) IS MORE THAN 6  
16 FEET FROM THE POINT OF SALE, IT SHALL BE 5-1/2 INCHES BY 8-1/2  
17 INCHES AND THE STATEMENT REQUIRED UNDER SUBSECTION (4) SHALL BE  
18 PRINTED IN 36-POINT BOLDFACED TYPE. IF THE SIGN REQUIRED UNDER  
19 SUBSECTION (4) IS 6 FEET OR LESS FROM THE POINT OF SALE, IT SHALL  
20 BE 2 INCHES BY 4 INCHES AND THE STATEMENT REQUIRED UNDER SUBSECTION  
21 (4) SHALL BE PRINTED IN 20-POINT BOLDFACED TYPE.

22 (6) THE DEPARTMENT OF COMMUNITY HEALTH SHALL PRODUCE THE SIGN  
23 REQUIRED UNDER SUBSECTION (4) AND, BEGINNING NOVEMBER 1, 2005, MAKE  
24 [THE SIGN AVAILABLE TO LICENSED RETAILERS DESCRIBED IN SUBSECTION (1) ON  
25 THE DEPARTMENT'S INTERNET WEBSITE FREE OF CHARGE. LICENSED RETAILERS  
26 DESCRIBED IN SUBSECTION (1) SHALL OBTAIN THE SIGN FROM THE DEPARTMENT'S  
27 INTERNET WEBSITE AND PROVIDE COPIES OF THE SIGN] FREE OF

1 CHARGE, UPON REQUEST, TO PERSONS WHO ARE SUBJECT TO SUBSECTION (4).

2 (7) IT IS AN AFFIRMATIVE DEFENSE TO A CITATION ISSUED PURSUANT  
3 TO SUBSECTION (1)(A) THAT THE DEFENDANT HAD IN FORCE AT THE TIME OF  
4 THE CITATION AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY FOR  
5 EMPLOYEES TO PREVENT THE SALE OF PRODUCTS THAT CONTAIN ANY  
6 COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY DETECTABLE  
7 QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER  
8 OF EPHEDRINE OR PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF  
9 EPHEDRINE OR PSEUDOEPHEDRINE TO PERSONS UNDER 18 YEARS OF AGE AND  
10 THAT THE DEFENDANT ENFORCED AND CONTINUES TO ENFORCE THE POLICY. A  
11 DEFENDANT WHO PROPOSES TO OFFER EVIDENCE OF THE AFFIRMATIVE DEFENSE  
12 DESCRIBED IN THIS SUBSECTION SHALL FILE AND SERVE NOTICE OF THE  
13 DEFENSE, IN WRITING, UPON THE COURT AND THE PROSECUTING ATTORNEY.  
14 THE NOTICE SHALL BE SERVED NOT LESS THAN 14 DAYS BEFORE THE HEARING  
15 DATE.

16 (8) A PROSECUTING ATTORNEY WHO PROPOSES TO OFFER TESTIMONY TO  
17 REBUT THE AFFIRMATIVE DEFENSE DESCRIBED IN SUBSECTION (7) SHALL  
18 FILE AND SERVE A NOTICE OF REBUTTAL, IN WRITING, UPON THE COURT AND  
19 THE DEFENDANT. THE NOTICE SHALL BE SERVED NOT LESS THAN 7 DAYS  
20 BEFORE THE HEARING DATE AND SHALL CONTAIN THE NAME AND ADDRESS OF  
21 EACH REBUTTAL WITNESS.

22 (9) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, BEGINNING  
23 DECEMBER 15, 2005, A CITY, TOWNSHIP, VILLAGE, COUNTY, OTHER LOCAL  
24 UNIT OF GOVERNMENT, OR POLITICAL SUBDIVISION OF THIS STATE SHALL  
25 NOT IMPOSE ANY NEW REQUIREMENT OR PROHIBITION PERTAINING TO THE  
26 SALE OF A PRODUCT DESCRIBED UNDER SUBSECTION (1) THAT IS CONTRARY  
27 TO, OR IN ANY WAY CONFLICTING WITH, THIS SECTION. THIS SUBSECTION

1 DOES NOT INVALIDATE OR OTHERWISE RESTRICT A REQUIREMENT OR  
2 PROHIBITION DESCRIBED IN THIS SUBSECTION EXISTING ON DECEMBER 15,  
3 2005.

4 (10) SUBSECTIONS (1) THROUGH (5) AND (7) THROUGH (9) TAKE  
5 EFFECT DECEMBER 15, 2005.

6 Enacting section 1. This amendatory act does not take effect  
7 unless Senate Bill No. 189 of the 93rd Legislature is enacted into  
8 law.