

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5672

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17766 (MCL 333.17766), as amended by 2004 PA
329, and by adding section 17780.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17766. Except as provided in ~~section~~ **SECTIONS** 17766d
2 **AND 17780**, a person who does any of the following is guilty of a
3 misdemeanor:

4 (a) Obtains or attempts to obtain a prescription drug by
5 giving a false name to a pharmacist or other authorized seller,
6 prescriber, or dispenser.

7 (b) Obtains or attempts to obtain a prescription drug by
8 falsely representing that he or she is a lawful prescriber,

1 dispenser, or licensee, or acting on behalf of a lawful prescriber,
2 dispenser, or licensee.

3 (c) Falsely makes, utters, publishes, passes, alters, or
4 forges a prescription.

5 (d) Knowingly possesses a false, forged, or altered
6 prescription.

7 (e) Knowingly attempts to obtain, obtains, or possesses a drug
8 by means of a prescription for other than a legitimate therapeutic
9 purpose, or as a result of a false, forged, or altered
10 prescription.

11 (f) Possesses or controls for the purpose of resale, or sells,
12 offers to sell, dispenses, or gives away, a drug, pharmaceutical
13 preparation, or chemical that has been dispensed on prescription
14 and has left the control of a pharmacist.

15 (g) Possesses or controls for the purpose of resale, or sells,
16 offers to sell, dispenses, or gives away, a drug, pharmaceutical
17 preparation, or chemical that has been damaged by heat, smoke,
18 fire, water, or other cause and is unfit for human or animal use.

19 (h) Prepares or permits the preparation of a prescription
20 drug, except as delegated by a pharmacist.

21 (i) Sells a drug in bulk or in an open package at auction,
22 unless the sale has been approved in accordance with rules of the
23 board.

24 **SEC. 17780. (1) THE BOARD SHALL ESTABLISH AND MAINTAIN A**
25 **CANCER DRUG REPOSITORY PROGRAM THAT WOULD ALLOW A PERSON TO DONATE**
26 **A CANCER DRUG OR SUPPLY FOR USE BY AN INDIVIDUAL WHO MEETS THE**
27 **ELIGIBILITY CRITERIA SPECIFIED UNDER SUBSECTION (7). THE BOARD**

1 SHALL ESTABLISH PROGRAM GUIDELINES, POLICIES, AND PROCEDURES
2 ADDRESSING THE CANCER DRUG REPOSITORY PROGRAM. UNDER THE CANCER
3 DRUG REPOSITORY PROGRAM, DONATIONS MAY BE MADE ON THE PREMISES OF A
4 HEALTH FACILITY OR PHARMACY THAT ELECTS TO PARTICIPATE IN THE
5 PROGRAM AND MEETS THE REQUIREMENTS SPECIFIED UNDER SUBSECTION (2).

6 (2) ANY HEALTH FACILITY OR PHARMACY THAT IS LICENSED AND IN
7 COMPLIANCE WITH ALL FEDERAL AND STATE LAWS, RULES, AND REGULATIONS
8 IS ELIGIBLE TO PARTICIPATE IN THE CANCER DRUG REPOSITORY PROGRAM.
9 PARTICIPATION IN THE CANCER DRUG REPOSITORY PROGRAM IS VOLUNTARY
10 AND A PHARMACY OR HEALTH FACILITY MAY WITHDRAW FROM PARTICIPATION
11 IN THE CANCER DRUG REPOSITORY PROGRAM AT ANY TIME UPON NOTIFICATION
12 TO THE BOARD. A NOTICE TO WITHDRAW FROM PARTICIPATION MAY BE GIVEN
13 BY TELEPHONE OR REGULAR MAIL. A PHARMACY OR HEALTH FACILITY MAY
14 CHOOSE TO FULLY PARTICIPATE IN THE CANCER DRUG REPOSITORY PROGRAM
15 BY ACCEPTING, STORING, AND DISPENSING OR ADMINISTERING DONATED
16 DRUGS AND SUPPLIES OR THE PHARMACY OR HEALTH FACILITY MAY LIMIT ITS
17 PARTICIPATION TO ONLY ACCEPTING AND STORING DONATED DRUGS AND
18 SUPPLIES. IF A PHARMACY OR HEALTH FACILITY CHOOSES TO LIMIT ITS
19 PARTICIPATION, THE PHARMACY OR HEALTH FACILITY SHALL DISTRIBUTE ANY
20 DONATED DRUGS TO A FULLY PARTICIPATING CANCER DRUG REPOSITORY IN
21 ACCORDANCE WITH SUBSECTION (8). A PHARMACY OR HEALTH FACILITY THAT
22 ELECTS TO PARTICIPATE IN THE CANCER DRUG REPOSITORY PROGRAM SHALL
23 SUBMIT THE FOLLOWING INFORMATION TO THE BOARD IN A FORM PROVIDED BY
24 THE BOARD THAT INCLUDES, AT A MINIMUM, EACH OF THE FOLLOWING:

25 (A) THE NAME, STREET ADDRESS, AND TELEPHONE NUMBER OF THE
26 PHARMACY OR HEALTH FACILITY.

27 (B) THE NAME AND TELEPHONE NUMBER OF A PHARMACIST WHO IS

1 EMPLOYED BY OR UNDER CONTRACT WITH THE PHARMACY OR HEALTH FACILITY,
2 OR OTHER CONTACT PERSON WHO IS FAMILIAR WITH THE PHARMACY'S OR
3 HEALTH FACILITY'S PARTICIPATION IN THE CANCER DRUG REPOSITORY
4 PROGRAM.

5 (C) A STATEMENT INDICATING THAT THE PHARMACY OR HEALTH
6 FACILITY IS LICENSED IN THIS STATE AND IN COMPLIANCE WITH ALL
7 FEDERAL AND STATE LAWS, RULES, AND REGULATIONS AND THE CHOSEN LEVEL
8 OF PARTICIPATION IN THE CANCER DRUG REPOSITORY PROGRAM.

9 (3) AN INDIVIDUAL WHO IS AT LEAST 18 YEARS OF AGE MAY DONATE
10 LEGALLY OBTAINED CANCER DRUGS OR SUPPLIES TO A CANCER DRUG
11 REPOSITORY. IF THE DONATED DRUGS HAVE NOT BEEN PREVIOUSLY
12 DISPENSED, A PHARMACY, HEALTH FACILITY, MANUFACTURER, OR WHOLESALE
13 DISTRIBUTOR MAY ALSO DONATE CANCER DRUGS OR SUPPLIES TO A CANCER
14 DRUG REPOSITORY. DONATED DRUGS OR SUPPLIES ARE ACCEPTABLE FOR
15 DONATION IF THEY ARE DETERMINED TO BE ELIGIBLE BY A PHARMACIST WHO
16 IS EMPLOYED BY OR UNDER CONTRACT WITH A CANCER DRUG REPOSITORY AS
17 FOLLOWS:

18 (A) A CANCER DRUG IS ELIGIBLE FOR DONATION UNDER THE CANCER
19 DRUG REPOSITORY PROGRAM ONLY IF ALL OF THE FOLLOWING REQUIREMENTS
20 ARE MET:

21 (i) THE DONATION IS ACCOMPANIED BY A CANCER DRUG REPOSITORY
22 DONOR FORM THAT IS PROVIDED BY THE BOARD AND STATES THAT TO THE
23 BEST OF THE DONOR'S KNOWLEDGE THE DONATED DRUG HAS BEEN PROPERLY
24 STORED AND THAT THE DRUG HAS NEVER BEEN OPENED, USED, TAMPERED
25 WITH, ADULTERATED, OR MISBRANDED. THE BOARD SHALL MAKE THE CANCER
26 DRUG REPOSITORY DONOR FORM AVAILABLE ON THE BOARD'S WEBSITE. THE
27 FORM SHALL BE SIGNED BY THE PERSON MAKING THE DONATION OR THAT

1 PERSON'S AUTHORIZED REPRESENTATIVE.

2 (ii) THE DRUG'S EXPIRATION DATE IS AT LEAST 6 MONTHS LATER THAN
3 THE DATE THE DRUG WAS DONATED.

4 (iii) THE DRUG IS IN ITS ORIGINAL, UNOPENED, TAMPER-EVIDENT UNIT
5 DOSE PACKAGING THAT INCLUDES THE DRUG'S LOT NUMBER AND EXPIRATION
6 DATE. SINGLE UNIT DOSE DRUGS MAY BE ACCEPTED IF THE SINGLE UNIT
7 DOSE PACKAGING IS UNOPENED.

8 (iv) THE DRUG IS NOT ADULTERATED OR MISBRANDED.

9 (B) CANCER SUPPLIES ARE ELIGIBLE FOR DONATION UNDER THE CANCER
10 DRUG REPOSITORY PROGRAM ONLY IF ALL OF THE FOLLOWING REQUIREMENTS
11 ARE MET:

12 (i) THE SUPPLIES ARE NOT ADULTERATED OR MISBRANDED.

13 (ii) THE SUPPLIES ARE IN THEIR ORIGINAL, UNOPENED, SEALED
14 PACKAGE.

15 (iii) THE DONATION IS ACCOMPANIED BY A CANCER DRUG REPOSITORY
16 DONOR FORM THAT IS PROVIDED BY THE BOARD AND STATES THAT TO THE
17 BEST OF THE DONOR'S KNOWLEDGE THE DONATED SUPPLY HAS BEEN PROPERLY
18 STORED AND THAT THE SUPPLY HAS NEVER BEEN OPENED, USED, TAMPERED
19 WITH, ADULTERATED, OR MISBRANDED. THE BOARD SHALL MAKE THE CANCER
20 DRUG REPOSITORY DONOR FORM AVAILABLE ON THE BOARD'S WEBSITE. THE
21 FORM SHALL BE SIGNED BY THE PERSON MAKING THE DONATION OR THAT
22 PERSON'S AUTHORIZED REPRESENTATIVE.

23 (4) CONTROLLED SUBSTANCES ARE NOT ELIGIBLE FOR DONATION OR
24 ACCEPTANCE UNDER THE CANCER DRUG REPOSITORY PROGRAM. CANCER DRUGS
25 AND SUPPLIES THAT DO NOT MEET THE CRITERIA DESCRIBED UNDER
26 SUBSECTION (3) ARE NOT ELIGIBLE FOR DONATION OR ACCEPTANCE UNDER
27 THE CANCER DRUG REPOSITORY PROGRAM. CANCER DRUGS AND SUPPLIES MAY

1 BE DONATED ON THE PREMISES OF A CANCER DRUG REPOSITORY TO A
2 PHARMACIST DESIGNATED BY THE REPOSITORY. A DROP BOX SHALL NOT BE
3 USED TO DELIVER OR ACCEPT DONATIONS. CANCER DRUGS AND SUPPLIES
4 DONATED UNDER THE CANCER DRUG REPOSITORY PROGRAM SHALL BE STORED IN
5 A SECURE STORAGE AREA UNDER ENVIRONMENTAL CONDITIONS APPROPRIATE
6 FOR THE DRUGS OR SUPPLIES BEING STORED. DONATED DRUGS AND SUPPLIES
7 MAY NOT BE STORED WITH NONDONATED INVENTORY.

8 (5) CANCER DRUGS AND SUPPLIES THAT ARE DONATED UNDER THE
9 CANCER DRUG REPOSITORY PROGRAM SHALL BE DISPENSED BY A PHARMACIST
10 PURSUANT TO A PRESCRIPTION BY A PRESCRIBER OR MAY BE DISPENSED OR
11 ADMINISTERED BY A DISPENSING PRESCRIBER. THE CANCER DRUGS AND
12 SUPPLIES SHALL BE VISUALLY INSPECTED BY THE PHARMACIST OR
13 DISPENSING PRESCRIBER BEFORE BEING DISPENSED OR ADMINISTERED FOR
14 ADULTERATION, MISBRANDING, AND DATE OF EXPIRATION. CANCER DRUGS OR
15 SUPPLIES THAT HAVE EXPIRED OR APPEAR UPON VISUAL INSPECTION TO BE
16 ADULTERATED, MISBRANDED, OR TAMPERED WITH IN ANY WAY MAY NOT BE
17 DISPENSED OR ADMINISTERED.

18 (6) BEFORE A CANCER DRUG OR SUPPLY MAY BE DISPENSED OR
19 ADMINISTERED TO AN INDIVIDUAL, THE INDIVIDUAL MUST PROVIDE
20 VERIFICATION THAT HE OR SHE HAS A CURRENT DIAGNOSIS OF CANCER,
21 PROVIDE PROOF OF HIS OR HER INSURANCE, IF ANY, AND SIGN A CANCER
22 DRUG REPOSITORY RECIPIENT FORM PROVIDED BY THE BOARD ACKNOWLEDGING
23 THAT THE INDIVIDUAL UNDERSTANDS THE INFORMATION STATED ON THE FORM.
24 THE FORM SHALL BE MADE AVAILABLE TO THE PUBLIC ON THE BOARD'S
25 WEBSITE. THE FORM SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING
26 INFORMATION:

27 (A) THAT THE DRUG OR SUPPLY BEING DISPENSED OR ADMINISTERED

1 HAS BEEN DONATED AND MAY HAVE BEEN PREVIOUSLY DISPENSED.

2 (B) THAT A VISUAL INSPECTION HAS BEEN CONDUCTED BY THE
3 PHARMACIST OR DISPENSING PRESCRIBER TO ENSURE THAT THE DRUG HAS NOT
4 EXPIRED, HAS NOT BEEN ADULTERATED OR MISBRANDED, AND IS IN ITS
5 ORIGINAL, UNOPENED PACKAGING.

6 (C) THAT THE PHARMACIST, THE DISPENSING OR ADMINISTERING
7 PRESCRIBER, THE CANCER DRUG REPOSITORY, THE BOARD, AND ANY OTHER
8 PARTICIPANT OF THE CANCER DRUG REPOSITORY PROGRAM CANNOT GUARANTEE
9 THE SAFETY OF THE DRUG OR SUPPLY BEING DISPENSED OR ADMINISTERED
10 AND THAT THE PHARMACIST OR PRESCRIBER HAS DETERMINED THAT THE DRUG
11 OR SUPPLY IS SAFE TO DISPENSE OR ADMINISTER BASED ON THE ACCURACY
12 OF THE DONOR'S FORM SUBMITTED WITH THE DONATED DRUG OR SUPPLY AND
13 THE VISUAL INSPECTION REQUIRED TO BE PERFORMED BY THE PHARMACIST OR
14 PRESCRIBER BEFORE DISPENSING OR ADMINISTERING.

15 (7) ANY RESIDENT OF THIS STATE WHO IS DIAGNOSED WITH CANCER IS
16 ELIGIBLE TO RECEIVE DRUGS OR SUPPLIES UNDER THE CANCER DRUG
17 REPOSITORY PROGRAM. CANCER DRUGS AND SUPPLIES DONATED UNDER THE
18 CANCER DRUG REPOSITORY PROGRAM SHALL NOT BE RESOLD AND SHALL ONLY
19 BE DISPENSED OR ADMINISTERED TO RESIDENTS OF THIS STATE WHO ARE
20 DIAGNOSED WITH CANCER. A PHARMACIST WHO DISPENSES THOSE DRUGS AND
21 SUPPLIES DONATED UNDER THE CANCER DRUG REPOSITORY PROGRAM SHALL NOT
22 SUBMIT A CLAIM OR OTHERWISE SEEK REIMBURSEMENT FROM ANY PUBLIC OR
23 PRIVATE THIRD PARTY PAYER FOR DRUGS OR SUPPLIES DISPENSED TO ANY
24 ELIGIBLE INDIVIDUAL IN ACCORDANCE WITH THE PROGRAM, NOR SHALL A
25 PUBLIC OR PRIVATE THIRD PARTY PAYER BE REQUIRED TO PROVIDE
26 REIMBURSEMENT FOR DONATED DRUGS OR SUPPLIES DISPENSED BY A
27 PHARMACIST TO AN ELIGIBLE INDIVIDUAL IN ACCORDANCE WITH THE

1 PROGRAM. CANCER DRUGS AND SUPPLIES DISPENSED UNDER THE CANCER DRUG
2 REPOSITORY PROGRAM SHALL BE DISPENSED IN THE FOLLOWING ORDER OF
3 PRIORITY:

4 (A) INDIVIDUALS WHO ARE UNINSURED OR DO NOT HAVE INSURANCE
5 COVERAGE FOR THOSE CANCER DRUGS OR SUPPLIES.

6 (B) INDIVIDUALS WHO ARE ENROLLED IN MEDICAID, MEDICARE, OR ANY
7 OTHER PUBLIC ASSISTANCE HEALTH CARE PROGRAM.

8 (C) ALL OTHER INDIVIDUALS WHO ARE RESIDENTS OF THIS STATE AND
9 DIAGNOSED WITH CANCER.

10 (8) A CANCER DRUG REPOSITORY MAY CHARGE THE INDIVIDUAL
11 RECEIVING A DRUG OR SUPPLY A HANDLING FEE OF NOT MORE THAN 250% OF
12 THE MEDICAID DISPENSING FEE OR \$5.00, WHICHEVER IS LESS, FOR EACH
13 CANCER DRUG OR SUPPLY DISPENSED OR ADMINISTERED. CANCER DRUG
14 REPOSITORIES MAY DISTRIBUTE DRUGS AND SUPPLIES DONATED UNDER THE
15 CANCER DRUG REPOSITORY PROGRAM TO OTHER REPOSITORIES IF REQUESTED
16 BY A PARTICIPATING REPOSITORY. A CANCER DRUG REPOSITORY THAT HAS
17 ELECTED NOT TO DISPENSE DONATED DRUGS OR SUPPLIES SHALL DISTRIBUTE
18 ANY DONATED DRUGS AND SUPPLIES TO A PARTICIPATING REPOSITORY UPON
19 REQUEST OF THE REPOSITORY. IF A CANCER DRUG REPOSITORY DISTRIBUTES
20 DRUGS OR SUPPLIES TO ANOTHER PARTICIPATING REPOSITORY, THE
21 REPOSITORY SHALL COMPLETE A CANCER DRUG REPOSITORY DONOR FORM
22 PROVIDED BY THE BOARD. THE COMPLETED FORM AND COPY OF THE DONOR
23 FORM THAT WAS COMPLETED BY THE ORIGINAL DONOR UNDER SUBSECTION (3)
24 SHALL BE PROVIDED TO THE FULLY PARTICIPATING CANCER DRUG REPOSITORY
25 AT THE TIME OF DISTRIBUTION.

26 (9) CANCER DRUG REPOSITORY DONOR AND RECIPIENT FORMS SHALL BE
27 MAINTAINED FOR AT LEAST 5 YEARS. A RECORD OF DESTRUCTION OF DONATED

1 DRUGS AND SUPPLIES THAT ARE NOT DISPENSED UNDER SUBSECTION (7)
2 SHALL BE MAINTAINED BY THE DISPENSING REPOSITORY FOR AT LEAST 5
3 YEARS. FOR EACH DRUG OR SUPPLY DESTROYED, THE RECORD SHALL INCLUDE
4 THE FOLLOWING INFORMATION:

5 (A) THE DATE OF DESTRUCTION.

6 (B) THE NAME, STRENGTH, AND QUANTITY OF THE CANCER DRUG
7 DESTROYED.

8 (C) THE NAME OF THE PERSON OR FIRM THAT DESTROYED THE DRUG.

9 (D) THE SOURCE OF THE DRUGS OR SUPPLIES DESTROYED.

10 (10) A MANUFACTURER IS NOT SUBJECT TO CRIMINAL LIABILITY OR
11 LIABILITY IN TORT OR OTHER CIVIL ACTION FOR INJURY, DEATH, OR LOSS
12 TO A PERSON OR TO PROPERTY FOR ANY OF THE FOLLOWING CAUSES OF
13 ACTION:

14 (A) THE INTENTIONAL OR UNINTENTIONAL ADULTERATION OR
15 MISBRANDING OF THE DRUG OR SUPPLY BY A PARTY NOT UNDER THE CONTROL
16 OF THE MANUFACTURER.

17 (B) THE FAILURE OF A PARTY NOT UNDER THE CONTROL OF THE
18 MANUFACTURER TO TRANSFER OR COMMUNICATE PRODUCT OR CONSUMER
19 INFORMATION OR THE EXPIRATION DATE OF THE DONATED DRUG OR SUPPLY.

20 (C) CLAIMS FOR PAYMENT TO GOVERNMENT OR PRIVATE PAYERS.

21 (11) A HEALTH FACILITY OR PHARMACY PARTICIPATING IN THE CANCER
22 DRUG REPOSITORY PROGRAM, A PHARMACIST DISPENSING A DRUG OR SUPPLY
23 PURSUANT TO THE PROGRAM, A PRESCRIBER DISPENSING OR ADMINISTERING A
24 DRUG OR SUPPLY PURSUANT TO THE PROGRAM, OR A DONOR OF A CANCER DRUG
25 OR SUPPLY IS IMMUNE FROM CIVIL LIABILITY FOR AN ACT OR OMISSION
26 THAT CAUSES INJURY TO OR THE DEATH OF AN INDIVIDUAL TO WHOM THE
27 CANCER DRUG OR SUPPLY IS DISPENSED AND NO DISCIPLINARY ACTION SHALL

1 BE TAKEN AGAINST A PHARMACIST OR PRESCRIBER AS LONG AS THE DRUG OR
2 SUPPLY IS DONATED, ACCEPTED, DISTRIBUTED, AND DISPENSED ACCORDING
3 TO THE REQUIREMENTS OF THIS SECTION. THIS IMMUNITY DOES NOT APPLY
4 IF THE ACT OR OMISSION INVOLVES RECKLESS, WANTON, OR INTENTIONAL
5 MISCONDUCT, OR MALPRACTICE UNRELATED TO THE QUALITY OF THE CANCER
6 DRUG OR SUPPLY.

7 (12) AS USED IN THIS SECTION:

8 (A) "CANCER DRUG" MEANS A PRESCRIPTION DRUG THAT IS USED TO
9 TREAT EITHER OF THE FOLLOWING:

10 (i) CANCER OR THE SIDE EFFECTS OF CANCER.

11 (ii) THE SIDE EFFECTS OF ANY PRESCRIPTION DRUG THAT IS USED TO
12 TREAT CANCER OR THE SIDE EFFECTS OF CANCER.

13 (B) "CANCER DRUG REPOSITORY" MEANS A HEALTH FACILITY OR
14 PHARMACY THAT HAS NOTIFIED THE BOARD OF ITS ELECTION TO PARTICIPATE
15 IN THE CANCER DRUG REPOSITORY PROGRAM.

16 (C) "CANCER SUPPLY" OR "SUPPLIES" MEANS PRESCRIPTION AND
17 NONPRESCRIPTION CANCER SUPPLIES NEEDED TO ADMINISTER A CANCER DRUG.

18 (D) "DISTRIBUTE" MEANS TO DELIVER, OTHER THAN BY ADMINISTERING
19 OR DISPENSING.

20 (E) "DONOR" MEANS AN INDIVIDUAL AND NOT A MANUFACTURER OR
21 WHOLESALE DISTRIBUTOR WHO DONATES A CANCER DRUG OR SUPPLY ACCORDING
22 TO THE REQUIREMENTS OF THE CANCER DRUG REPOSITORY PROGRAM.

23 (F) "HEALTH FACILITY" MEANS A FACILITY LICENSED IN ACCORDANCE
24 WITH ARTICLE 17 AS A COUNTY MEDICAL CARE FACILITY, FREESTANDING
25 SURGICAL OUTPATIENT FACILITY, HOME FOR THE AGED, HOSPITAL, HOSPITAL
26 LONG-TERM CARE UNIT, NURSING HOME, AND HOSPICE.

27 (G) "SIDE EFFECTS OF CANCER" MEANS SYMPTOMS OF CANCER.

1 (H) "SINGLE UNIT DOSE PACKAGING" MEANS A SINGLE UNIT CONTAINER
2 FOR ARTICLES INTENDED FOR ADMINISTRATION AS A SINGLE DOSE, DIRECT
3 FROM THE CONTAINER.

4 (I) "TAMPER-EVIDENT UNIT DOSE PACKAGING" MEANS A CONTAINER
5 WITHIN WHICH A DRUG IS SEALED SO THAT THE CONTENTS CANNOT BE OPENED
6 WITHOUT OBVIOUS DESTRUCTION OF THE SEAL.