

SENATE BILL No. 1538

September 24, 2008, Introduced by Senators SCHAUER and BARCIA and referred to the Committee on Health Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 17766G. (1) A PERSON WHO POSSESSES NONPRESCRIPTION COUGH
2 OR COLD MEDICINE THAT CONTAINS DEXTROMETHORPHAN FOR RETAIL SALE
3 PURSUANT TO A LICENSE ISSUED UNDER THE GENERAL SALES TAX ACT, 1933
4 PA 167, MCL 205.51 TO 205.78, SHALL NOT SELL THAT PRODUCT TO AN
5 INDIVIDUAL UNDER 18 YEARS OF AGE. THIS SECTION DOES NOT APPLY TO A
6 PRESCRIPTION COUGH AND COLD MEDICINE THAT CONTAINS
7 DEXTROMETHORPHAN. AS USED IN THIS SECTION, "DEXTROMETHORPHAN" MEANS
8 DEXTROROTATORY ISOMER OF 3-METHOXY-N-METHYLMORPHINAN AND ITS SALTS.

9 (2) IT IS AN AFFIRMATIVE DEFENSE TO A CITATION ISSUED UNDER
10 SUBSECTION (1) THAT THE DEFENDANT HAD IN FORCE AT THE TIME OF THE

1 CITATION AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY FOR
2 EMPLOYEES TO PREVENT THE SALE OF NONPRESCRIPTION COUGH OR COLD
3 MEDICINE THAT CONTAINS DEXTROMETHORPHAN TO PERSONS UNDER 18 YEARS
4 OF AGE AND THAT THE DEFENDANT ENFORCED AND CONTINUES TO ENFORCE THE
5 POLICY. A DEFENDANT WHO PROPOSES TO OFFER EVIDENCE OF THE
6 AFFIRMATIVE DEFENSE DESCRIBED IN THIS SUBSECTION SHALL FILE AND
7 SERVE NOTICE OF THE DEFENSE, IN WRITING, UPON THE COURT AND THE
8 PROSECUTING ATTORNEY. THE NOTICE SHALL BE SERVED NOT LESS THAN 14
9 DAYS BEFORE THE HEARING DATE.

10 (3) A PROSECUTING ATTORNEY WHO PROPOSES TO OFFER TESTIMONY TO
11 REBUT THE AFFIRMATIVE DEFENSE DESCRIBED IN SUBSECTION (2) SHALL
12 FILE AND SERVE A NOTICE OF REBUTTAL, IN WRITING, UPON THE COURT AND
13 THE DEFENDANT. THE NOTICE SHALL BE SERVED NOT LESS THAN 7 DAYS
14 BEFORE THE HEARING DATE AND SHALL CONTAIN THE NAME AND ADDRESS OF
15 EACH REBUTTAL WITNESS.

16 (4) A PERSON WHO VIOLATES OR AIDS OR ABETS ANOTHER IN A
17 VIOLATION OF THIS SECTION IS RESPONSIBLE FOR A STATE CIVIL
18 INFRACTION AS PROVIDED UNDER CHAPTER 88 OF THE REVISED JUDICATURE
19 ACT OF 1961, 1961 PA 236, MCL 600.8801 TO 600.8835, AND MAY BE
20 ORDERED TO PAY A CIVIL FINE AS FOLLOWS:

21 (A) FOR THE FIRST OFFENSE, A CIVIL FINE OF NOT MORE THAN
22 \$1,000.00.

23 (B) FOR THE SECOND OFFENSE, A CIVIL FINE OF NOT MORE THAN
24 \$2,000.00.

25 (C) FOR THE THIRD OR SUBSEQUENT OFFENSE, A CIVIL FINE OF NOT
26 MORE THAN \$5,000.00.