

HOUSE BILL No. 4749

June 14, 2011, Introduced by Rep. Price and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 17766c, 17766e, and 17766f (MCL 333.17766c,
333.17766e, and 333.17766f), section 17766c as amended by 2003 PA
308, section 17766e as added by 2005 PA 87, and section 17766f as
added by 2005 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17766c. (1) A person shall not ~~possess~~**DO ANY OF THE**
2 **FOLLOWING:**

3 **(A) PURCHASE MORE THAN 3.6 GRAMS OF EPHEDRINE OR**
4 **PSEUDOEPHEDRINE ALONE OR IN A MIXTURE WITHIN A SINGLE CALENDAR DAY.**

5 **(B) PURCHASE MORE THAN 9 GRAMS OF EPHEDRINE OR PSEUDOEPHEDRINE**
6 **ALONE OR IN A MIXTURE WITHIN A 30-DAY PERIOD.**

7 **(C) POSSESS** more than 12 grams of ephedrine or pseudoephedrine
8 alone or in a mixture.

(2) A person who violates this section is guilty of a **CRIME AS FOLLOWS:**

(A) A PERSON WHO VIOLATES SUBSECTION (1) (A) OR (B) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

(B) A PERSON WHO VIOLATES SUBSECTION (1) (C) IS GUILTY OF A felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

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

(a) A person who possesses ephedrine or pseudoephedrine pursuant to a license issued by this state or the United States to manufacture, deliver, dispense, possess with intent to manufacture or deliver, or possess a controlled substance, prescription drug, or other drug.

(b) An individual who possesses ephedrine or pseudoephedrine pursuant to a prescription.

(c) A person who possesses ephedrine or pseudoephedrine for retail sale pursuant to a license issued under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(d) A person who possesses ephedrine or pseudoephedrine in the course of his or her business of selling or transporting ephedrine or pseudoephedrine to a person described in subdivision (a) or (c).

(e) A person who, in the course of his or her business, stores ephedrine or pseudoephedrine for sale or distribution to a person described in subdivision (a), (c), or (d).

(f) Any product that the state board of pharmacy, upon application of a manufacturer, exempts from this section because

1 the product has been formulated in such a way as to effectively
2 prevent the conversion of the active ingredient into
3 methamphetamine.

4 (g) Possession of any pediatric product primarily intended for
5 administration to children under 12 years of age according to label
6 instructions.

7 Sec. 17766e. (1) Except as otherwise provided under this
8 section, a person who possesses ephedrine or pseudoephedrine for
9 retail sale pursuant to a license issued under the general sales
10 tax act, 1933 PA 167, MCL 205.51 to 205.78, shall maintain all
11 products that contain any compound, mixture, or preparation
12 containing any detectable quantity of ephedrine or pseudoephedrine,
13 a salt or optical isomer of ephedrine or pseudoephedrine, or a salt
14 of an optical isomer of ephedrine or pseudoephedrine in accordance
15 with 1 of the following:

16 (a) Behind a counter where the public is not permitted.

17 (b) Within a locked case so that a customer wanting access to
18 the product must ask a store employee for assistance.

19 ~~—— (c) Within 20 feet of a counter that allows the attendant to~~
20 ~~view the products in an unobstructed manner or utilize an antitheft~~
21 ~~device on those products that uses special package tags and~~
22 ~~detection alarms designed to prevent theft along with constant~~
23 ~~video surveillance as follows:~~

24 ~~—— (i) The video camera is positioned so that individuals~~
25 ~~examining or removing those products are visible.~~

26 ~~—— (ii) The video camera is programmed to record, at a minimum, a~~
27 ~~1-second image every 5 seconds.~~

~~1 (iii) The video images must be maintained for a minimum of 6~~
~~2 months and made available to any law enforcement agency upon~~
~~3 request.~~

~~4 (iv) The retailer shall prominently display a sign indicating~~
~~5 that the area is under constant video surveillance in a conspicuous~~
~~6 location, clearly visible to the public.~~

~~7 (2) If the products described under subsection (1) are~~
~~8 maintained within 20 feet of a counter and that counter is not~~
~~9 staffed by 1 or more employees at all times, then the retail~~
~~10 distributor shall utilize antitheft devices and video surveillance~~
~~11 as provided under subsection (1)(c) when the counter is not~~
~~12 staffed. If all of the products described under subsection (1) are~~
~~13 maintained behind the counter or within a locked case, then the~~
~~14 retailer is not required to maintain a log or any other type of~~
~~15 record detailing the sale of those products.~~

16 (2) ~~(3)~~ A person who sells a product described in subsection
17 (1) shall do each of the following:

18 (a) Require the purchaser of a product described under
19 subsection (1) to produce a valid **GOVERNMENT ISSUED** photo
20 identification that includes the individual's name and date of
21 birth.

22 (b) ~~Except as otherwise provided under subsection (2),~~
23 ~~maintain~~ **MAINTAIN** a log or some type of record detailing the sale
24 of a product described under subsection (1), including the date of
25 the sale **AND THE TIME OF PURCHASE**, the name, **ADDRESS**, and date of
26 birth of the buyer, ~~and~~ the amount and description of the product
27 sold, **AND A DESCRIPTION OF THE IDENTIFICATION USED TO MAKE THE**

1 PURCHASE, SUCH AS THE STATE IN WHICH A DRIVER LICENSE USED FOR
2 IDENTIFICATION WAS ISSUED AND NUMBER OF THAT LICENSE. THE SELLER
3 SHALL ALSO REQUIRE THE PURCHASER TO SIGN THE LOG AT THE TIME OF
4 SALE. INFORMATION ENTERED INTO THE NATIONAL PRECURSOR LOG EXCHANGE
5 (NPLEX) SATISFIES THE REQUIREMENT TO MAINTAIN A LOG OR SOME TYPE OF
6 RECORD DETAILING THE SALE UNDER THIS SUBDIVISION. The log or other
7 means of recording the sale as required under this subdivision
8 shall be maintained for a minimum of 6 months and made available to
9 only a law enforcement agency upon request. The log or other means
10 of recording the sale is not a public record and is not subject to
11 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
12 A person shall not sell or provide a copy of the log or other means
13 of recording the sale to another for the purpose of surveys,
14 marketing, or solicitations.

15 (3) ~~(4)~~—This section does not apply to the following:

16 (a) A pediatric product primarily intended for administration
17 to children under 12 years of age according to label instructions.

18 (b) A product containing pseudoephedrine that is in a liquid
19 form if pseudoephedrine is not the only active ingredient.

20 (c) A product that the state board of pharmacy, upon
21 application of a manufacturer or certification by the United States
22 drug enforcement administration as inconvertible, exempts from this
23 section because the product has been formulated in such a way as to
24 effectively prevent the conversion of the active ingredient into
25 methamphetamine.

26 (d) A product that is dispensed pursuant to a prescription.

27 (4) ~~(5)~~—A person who violates this section is responsible for

1 a state civil infraction as provided under chapter 88 of the
 2 revised judicature act of 1961, 1961 PA 236, MCL 600.8801 to
 3 600.8835, and may be ordered to pay a civil fine of not more than
 4 ~~\$50.00~~ **\$500.00** for each violation.

5 (5) ~~(6)~~ By December 15, 2006, the department of state police
 6 shall submit a written report to the legislature regarding the
 7 impact and effectiveness of the amendatory act that added this
 8 section and section 17766f, including, but not limited to, the
 9 number of clandestine methamphetamine lab incidents before and
 10 after this legislation.

11 Sec. 17766f. (1) A person who possesses products that contain
 12 any compound, mixture, or preparation containing any detectable
 13 quantity of ephedrine or pseudoephedrine, a salt or optical isomer
 14 of ephedrine or pseudoephedrine, or a salt of an optical isomer of
 15 ephedrine or pseudoephedrine for retail sale pursuant to a license
 16 issued under the general sales tax act, 1933 PA 167, MCL 205.51 to
 17 205.78, shall not knowingly do any of the following:

18 (a) Sell any product described under this subsection to an
 19 individual under 18 years of age.

20 **(B) SELL MORE THAN 3.6 GRAMS OF EPHEDRINE OR PSEUDOEPHEDRINE**
 21 **ALONE OR IN A MIXTURE TO ANY INDIVIDUAL ON ANY SINGLE CALENDAR DAY.**

22 **(C) SELL MORE THAN 9 GRAMS OF EPHEDRINE OR PSEUDOEPHEDRINE**
 23 **ALONE OR IN A MIXTURE TO ANY INDIVIDUAL WITHIN A 30-DAY PERIOD.**

24 ~~— (b) Sell in a single over-the-counter sale more than 2~~
 25 ~~packages, or 48 tablets or capsules, of any product described under~~
 26 ~~this subsection to any individual.~~

27 **(D) ~~(e)~~ Sell in a single over-the-counter sale more than 2**

1 personal convenience packages containing 2 tablets or capsules each
2 of any product described under this subsection to any individual.

3 (2) This section does not apply to the following:

4 (a) A pediatric product primarily intended for administration
5 to children under 12 years of age according to label instructions.

6 (b) A product containing pseudoephedrine that is in a liquid
7 form if pseudoephedrine is not the only active ingredient.

8 (c) A product that the state board of pharmacy, upon
9 application of a manufacturer or certification by the United States
10 drug enforcement administration as inconvertible, exempts from this
11 section because the product has been formulated in such a way as to
12 effectively prevent the conversion of the active ingredient into
13 methamphetamine.

14 (d) A product that is dispensed pursuant to a prescription.

15 (3) A person who violates this section is responsible for a
16 state civil infraction as provided under chapter 88 of the revised
17 judicature act of 1961, 1961 PA 236, MCL 600.8801 to 600.8835, and
18 may be ordered to pay a civil fine of not more than ~~\$50.00~~ **\$500.00**
19 for each violation.

20 ~~—— (4) A person described under subsection (1) shall post, in a~~
21 ~~place close to the point of sale and conspicuous to both employees~~
22 ~~and customers, a sign produced by the department of community~~
23 ~~health that includes the following statement:~~

24 ~~—— "The sale of any product that contains any compound, mixture,~~
25 ~~or preparation containing any detectable quantity of ephedrine or~~
26 ~~pseudoephedrine, a salt or optical isomer of ephedrine or~~
27 ~~pseudoephedrine, or a salt of an optical isomer of ephedrine or~~

~~pseudoephedrine to a minor under 18 years of age is prohibited by law. In order to purchase a product described above, you must provide the retailer with an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, or any other bona fide picture identification which establishes the identity and age of the individual. The retailer may require you to sign a log or other type of record detailing the sale of that product. State law further prohibits in a single over-the-counter transaction the sale of more than 2 packages, or 48 tablets or capsules, of any product described above."~~

~~—— (5) If the sign required under subsection (4) is more than 6 feet from the point of sale, it shall be 5 1/2 inches by 8 1/2 inches and the statement required under subsection (4) shall be printed in 36 point boldfaced type. If the sign required under subsection (4) is 6 feet or less from the point of sale, it shall be 2 inches by 4 inches and the statement required under subsection (4) shall be printed in 20 point boldfaced type.~~

~~—— (6) The department of community health shall produce the sign required under subsection (4) and, beginning November 1, 2005, make the sign available to licensed retailers described in subsection (1) on the department's internet website free of charge. Licensed retailers described in subsection (1) shall obtain the sign from the department's internet website and provide copies of the sign free of charge, upon request, to persons who are subject to subsection (4).~~

~~(4) (7)~~—It is an affirmative defense to a citation issued pursuant to subsection (1)(a) that the defendant had in force at

1 the time of the citation and continues to have in force a written
2 policy for employees to prevent the sale of products that contain
3 any compound, mixture, or preparation containing any detectable
4 quantity of ephedrine or pseudoephedrine, a salt or optical isomer
5 of ephedrine or pseudoephedrine, or a salt of an optical isomer of
6 ephedrine or pseudoephedrine to persons under 18 years of age and
7 that the defendant enforced and continues to enforce the policy. A
8 defendant who proposes to offer evidence of the affirmative defense
9 described in this subsection shall file and serve notice of the
10 defense, in writing, upon the court and the prosecuting attorney.
11 The notice shall be served not less than 14 days before the hearing
12 date.

13 (5) ~~(8)~~—A prosecuting attorney who proposes to offer testimony
14 to rebut the affirmative defense described in subsection ~~(7)~~—(4)
15 shall file and serve a notice of rebuttal, in writing, upon the
16 court and the defendant. The notice shall be served not less than 7
17 days before the hearing date and shall contain the name and address
18 of each rebuttal witness.

19 (6) ~~(9)~~—Notwithstanding any other provision of law, beginning
20 December 15, 2005, a city, township, village, county, other local
21 unit of government, or political subdivision of this state shall
22 not impose any new requirement or prohibition pertaining to the
23 sale of a product described under subsection (1) that is contrary
24 to, or in any way conflicting with, this section. This subsection
25 does not invalidate or otherwise restrict a requirement or
26 prohibition described in this subsection existing on December 15,
27 2005.

1 ~~———— (10) Subsections (1) through (5) and (7) through (9) take~~
2 ~~effect December 15, 2005.~~

3 Enacting section 1. This amendatory act does not take effect
4 unless Senate Bill No. 333 of the 96th Legislature is enacted into
5 law.