

SENATE BILL No. 350

April 28, 2011, Introduced by Senators NOFS, PROOS, MARLEAU and JONES and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17766e (MCL 333.17766e), as added by 2005 PA
87.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

9 (i) The video camera is positioned so that individuals
10 examining or removing those products are visible.

11 (ii) The video camera is programmed to record, at a minimum, a
12 1-second image every 5 seconds.

13 (iii) The video images ~~must~~**SHALL** be maintained for a minimum of
14 6 months and made available to any law enforcement agency upon
15 request.

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

19 (2) If the products described under subsection (1) are
20 maintained within 20 feet of a counter and that counter is not
21 staffed by 1 or more employees at all times, then the retail
22 distributor shall utilize antitheft devices and video surveillance
23 as provided under subsection (1)(c) when the counter is not
24 staffed. If all of the products described under subsection (1) are
25 maintained behind the counter or within a locked case, then the
26 retailer is not required to maintain a log or any other type of
27 record detailing the sale of those products.

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

3 (a) Require the purchaser of a product described under
4 subsection (1) to produce a valid photo identification that
5 includes the individual's name and date of birth.

6 (b) Except as otherwise provided under subsection (2),
7 maintain a log or some type of record detailing the sale of a
8 product described under subsection (1), including the date of the
9 sale, the name and date of birth of the buyer, and the amount and
10 description of the product sold. The log or other means of
11 recording the sale as required under this subdivision shall be
12 maintained for a minimum of 6 months and made available to only a
13 law enforcement agency upon request. The log or other means of
14 recording the sale is not a public record and is not subject to the
15 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. A
16 person shall not sell or provide a copy of the log or other means
17 of recording the sale to another for the purpose of surveys,
18 marketing, or solicitations.

19 (4) This section does not apply to the following:

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

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

24 (c) A product that the state board of pharmacy, upon
25 application of a manufacturer or certification by the United States
26 drug enforcement administration as inconvertible, exempts from this
27 section because the product has been formulated in such a way as to

1 effectively prevent the conversion of the active ingredient into
2 methamphetamine.

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

4 (5) A person who violates ~~this section~~ **SUBSECTIONS (1) TO (3)**
5 is responsible for a state civil infraction as provided under
6 chapter 88 of the revised judicature act of 1961, 1961 PA 236, MCL
7 600.8801 to 600.8835, and may be ordered to pay a civil fine of not
8 more than \$50.00 for each violation.

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

15 (6) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), A PERSON
16 WHO USES OR ATTEMPTS TO USE A FALSE IDENTIFICATION OR THE
17 IDENTIFICATION OF ANOTHER PERSON TO PURCHASE A PRODUCT THAT
18 CONTAINS ANY COMPOUND, MIXTURE, OR PREPARATION CONTAINING ANY
19 DETECTABLE QUANTITY OF EPHEDRINE OR PSEUDOEPHEDRINE AS DESCRIBED IN
20 SUBSECTION (1) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
21 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
22 \$100.00, OR BOTH.

23 (7) SUBSECTION (6) DOES NOT APPLY TO A PERSON WHO PARTICIPATES
24 IN EITHER OF THE FOLLOWING:

25 (A) AN UNDERCOVER OPERATION IN WHICH THE INDIVIDUAL PURCHASES
26 OR RECEIVES A PRODUCT THAT CONTAINS ANY COMPOUND, MIXTURE, OR
27 PREPARATION CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR

1 PSEUDOEPHEDRINE AS DESCRIBED IN SUBSECTION (1) UNDER DIRECTION OF
2 THE PERSON'S EMPLOYER AND WITH THE PRIOR APPROVAL OF THE LOCAL
3 PROSECUTOR'S OFFICE AS PART OF AN EMPLOYER-SPONSORED INTERNAL
4 ENFORCEMENT ACTION.

5 (B) AN UNDERCOVER OPERATION IN WHICH THE INDIVIDUAL PURCHASES
6 OR RECEIVES A PRODUCT THAT CONTAINS ANY COMPOUND, MIXTURE, OR
7 PREPARATION CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR
8 PSEUDOEPHEDRINE AS DESCRIBED IN SUBSECTION (1) UNDER THE DIRECTION
9 OF THE STATE POLICE OR LOCAL LAW ENFORCEMENT AGENCY AS PART OF AN
10 ENFORCEMENT ACTION UNLESS THE INITIAL OR CONTEMPORANEOUS PURCHASE
11 OR RECEIPT OF A PRODUCT THAT CONTAINS ANY COMPOUND, MIXTURE, OR
12 PREPARATION CONTAINING ANY DETECTABLE QUANTITY OF EPHEDRINE OR
13 PSEUDOEPHEDRINE BY THE PERSON WAS NOT UNDER THE DIRECTION OF THE
14 STATE POLICE OR LOCAL LAW ENFORCEMENT AGENCY AND WAS NOT PART OF
15 THE UNDERCOVER OPERATION.