

Act No. 85  
Public Acts of 2011  
Approved by the Governor  
July 15, 2011  
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July 15, 2011  
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**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2011**

**Introduced by Senators Nofs, Proos, Marleau and Jones**

# **ENROLLED SENATE BILL No. 350**

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 17766e (MCL 333.17766e), as added by 2005 PA 87.

*The People of the State of Michigan enact:*

Sec. 17766e. (1) Except as otherwise provided under this section, 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, shall maintain all products that contain any compound, mixture, or preparation containing any detectable quantity of ephedrine

or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine in accordance with 1 of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Except as otherwise provided in subsection (7), a person who uses or attempts to use a false identification or the identification of another person to purchase a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine as described in subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(7) Subsection (6) does not apply to a person who participates in either of the following:

(a) An undercover operation in which the individual purchases or receives a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine as described in subsection (1) under direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the individual purchases or receives a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine as described in subsection (1) under the direction of the state police or local law enforcement agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine by the person was not under the direction of the state police or local law enforcement agency and was not part of the undercover operation.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved .....

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Governor