

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

333.17766f Possession of products containing ephedrine or pseudoephedrine; prohibited conduct; exceptions; violation; penalty; affirmative defense; rebuttal; conflict of local requirements with section.

Sec. 17766f. (1) A person who possesses 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 for retail sale under a license issued under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, shall not knowingly do any of the following:

- (a) Sell any product described under this subsection to an individual under 18 years of age.
- (b) Sell more than 3.6 grams of ephedrine or pseudoephedrine alone or in a mixture to any individual on any single calendar day.
- (c) Sell more than 9 grams of ephedrine or pseudoephedrine alone or in a mixture to any individual within a 30-day period.
- (d) Sell in a single over-the-counter sale more than 2 personal convenience packages containing 2 tablets or capsules each of any product described under this subsection to any individual.
- (e) Sell any product described under this subsection to an individual during the period in which a stop sale alert is generated for that individual based upon criminal history record information provided under the methamphetamine abuse reporting act. The NPLeX system shall contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized shall be logged by the system.

(2) 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.

(3) A person who violates this section 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 \$500.00 for each violation.

(4) It is an affirmative defense to a citation issued under subsection (1)(a) that the defendant had in force at the time of the citation and continues to have in force a written policy for employees to prevent the sale of 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 to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice shall be served not less than 14 days before the hearing date.

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

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

History: Add. 2005, Act 86, Imd. Eff. July 20, 2005;—Am. 2011, Act 86, Imd. Eff. July 15, 2011;—Am. 2014, Act 275, Eff. Jan. 1, 2015.

Popular name: Act 368