

Act No. 86
Public Acts of 2005
Approved by the Governor
July 19, 2005
Filed with the Secretary of State
July 20, 2005
EFFECTIVE DATE: July 20, 2005

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Reps. Jones, Schuitmaker, McConico, Anderson, Stewart, Phillips, Kooiman, Vander Veen, Taub, Stakoe, Gleason, Nofs, Steil, Moolenaar, Palsrok, Cheeks, Elsenheimer, Espinoza, Lemmons, III, Lemmons, Jr., McDowell, Sheltroun and Murphy

ENROLLED HOUSE BILL No. 4322

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," (MCL 333.1101 to 333.25211) by adding section 17766f.

The People of the State of Michigan enact:

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 pursuant to 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 in a single over-the-counter sale more than 2 packages, or 48 tablets or capsules, of any product described under this subsection to any individual.
 - (c) 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.
- (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 \$50.00 for each violation.

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

“The sale of any product that contains 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 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).

(7) It is an affirmative defense to a citation issued pursuant to 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.

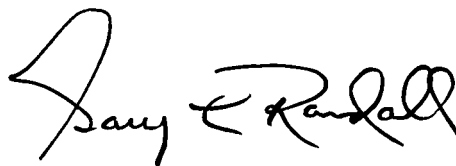
(8) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (7) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than 7 days before the hearing date and shall contain the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

(9) Notwithstanding any other provision of law, beginning December 15, 2005, 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.

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

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 189 of the 93rd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor