

SENATE BILL NO. 402

April 28, 2021, Introduced by Senator MCBROOM and referred to the Committee on Health Policy and Human Services.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 17766f (MCL 333.17766f), as amended by 2014 PA
275.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17766f. (1) A person ~~who~~**that** possesses products that
2 contain any compound, mixture, or preparation containing any
3 detectable quantity of ephedrine or pseudoephedrine, a salt or
4 optical isomer of ephedrine or pseudoephedrine, or a salt of an

1 optical isomer of ephedrine or pseudoephedrine for retail sale
2 under a license issued under the general sales tax act, 1933 PA
3 167, MCL 205.51 to 205.78, shall not knowingly do any of the
4 following:

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

7 (b) Sell more than 3.6 grams of ephedrine or pseudoephedrine
8 alone or in a mixture to any individual on any single calendar day.

9 (c) Sell more than ~~9~~**7.2** grams of ephedrine or pseudoephedrine
10 alone or in a mixture to any individual within a 30-day period.

11 (d) Sell in a single over-the-counter sale more than 2
12 personal convenience packages containing 2 tablets or capsules each
13 of any product described under this subsection to any individual.

14 (e) Sell any product described under this subsection to an
15 individual during the period in which a stop sale alert is
16 generated for that individual based ~~upon~~**on** criminal history record
17 information provided under the methamphetamine abuse reporting act,
18 **2014 PA 276, MCL 28.121 to 28.128**. The NPLeX system ~~shall~~**must**
19 contain an override function that may be used by a dispenser of
20 ephedrine or pseudoephedrine who has a reasonable fear of imminent
21 bodily harm if the dispenser does not complete a sale. Each
22 instance in which the override function is ~~utilized shall~~**used must**
23 be logged by the system.

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

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

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

29 (c) A product that the ~~state~~**Michigan** board of pharmacy, upon

1 application of a manufacturer or certification by the United States
2 ~~drug enforcement administration~~ **Drug Enforcement Administration** as
3 inconvertible, exempts from this section because the product has
4 been formulated in such a way as to effectively prevent the
5 conversion of the active ingredient into methamphetamine.

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

7 (3) A person ~~who~~ **that** violates this section is responsible for
8 a state civil infraction as provided under chapter 88 of the
9 revised judicature act of 1961, 1961 PA 236, MCL 600.8801 to
10 600.8835, and may be ordered to pay a civil fine of not more than
11 \$500.00 for each violation.

12 (4) It is an affirmative defense to a citation issued under
13 subsection (1)(a) that the defendant had in force at the time of
14 the citation and continues to have in force a written policy for
15 employees to prevent the sale of products that contain any
16 compound, mixture, or preparation containing any detectable
17 quantity of ephedrine or pseudoephedrine, a salt or optical isomer
18 of ephedrine or pseudoephedrine, or a salt of an optical isomer of
19 ephedrine or pseudoephedrine to ~~persons~~ **individuals** under 18 years
20 of age and that the defendant enforced and continues to enforce the
21 policy. A defendant who proposes to offer evidence of the
22 affirmative defense described in this subsection shall file and
23 serve notice of the defense, in writing, upon the court and the
24 prosecuting attorney. The notice ~~shall~~ **must** be served not less than
25 14 days before the hearing date.

26 (5) A prosecuting attorney who proposes to offer testimony to
27 rebut the affirmative defense described in subsection (4) shall
28 file and serve a notice of rebuttal, in writing, upon the court and
29 the defendant. The notice ~~shall~~ **must** be served not less than 7 days

1 before the hearing date and ~~shall~~**must** contain the name and address
2 of each rebuttal witness.

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

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.

13 Enacting section 2. This amendatory act does not take effect
14 unless Senate Bill No. 401 of the 101st Legislature is enacted into
15 law.