

SENATE BILL No. 756

February 5, 2014, Introduced by Senator PROOS and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 7340a and 17766f (MCL 333.7340a and
333.17766f), section 7340a as added by 2011 PA 84 and section
17766f as amended by 2011 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7340a. (1) ~~Beginning January 1, 2012, a retailer shall,~~
2 ~~before~~ **BEFORE** completing a sale under section 17766f, **A RETAILER**
3 **SHALL** electronically submit the required information to the
4 national precursor log exchange (NPLEx) administered by the
5 national association of drug diversion investigators (NADDI). A
6 retailer shall not be required to pay a fee for using the NPLEx
7 system.

8 (2) If a retailer selling a nonprescription product containing
9 ephedrine or pseudoephedrine experiences mechanical or electronic

1 failure of the electronic sales tracking system and is unable to
2 comply with the electronic sales tracking requirement, the retailer
3 shall maintain a written log or an alternative electronic record-
4 keeping mechanism until such time as the retailer is able to comply
5 with the electronic sales tracking requirement.

6 (3) NADDI shall provide real-time access to NPLeX information
7 through the NPLeX online portal to law enforcement in this state as
8 authorized by state and federal law.

9 (4) The system described in subsection (1) shall be capable of
10 generating a stop sale alert notifying the retailer that ~~completion~~
11 ~~of~~ **THE PERSON IS PROHIBITED FROM PURCHASING A NONPRESCRIPTION**
12 **PRODUCT CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE DUE TO A CONVICTION**
13 **REPORTED UNDER THE METHAMPHETAMINE ABUSE REPORTING ACT OR THAT**
14 **COMPLETING** the sale will result in the seller's or purchaser's
15 violating the quantity limits set forth in section 17766f. ~~The~~
16 **EXCEPT AS OTHERWISE PROVIDED BY LAW, THE** seller shall not complete
17 the sale if the system generates a stop sale alert. The system
18 shall contain an override function that may be used by a dispenser
19 of ephedrine or pseudoephedrine who has a reasonable fear of
20 imminent bodily harm if the dispenser does not complete a sale.
21 Each instance in which the override function is utilized shall be
22 logged by the system.

23 (5) A person's failure to comply with the record-keeping or
24 sales verification requirements of this section does not create a
25 civil cause of action for damages to any other person arising out
26 of that failure absent a direct and proximate cause, and the person
27 is immune from civil liability for any damages arising out of that

1 failure.

2 (6) A person who violates this section is guilty of a
3 misdemeanor punishable by a fine of not more than \$500.00.

4 Sec. 17766f. (1) A person who possesses products that contain
5 any compound, mixture, or preparation containing any detectable
6 quantity of ephedrine or pseudoephedrine, a salt or optical isomer
7 of ephedrine or pseudoephedrine, or a salt of an optical isomer of
8 ephedrine or pseudoephedrine for retail sale ~~pursuant to~~ **UNDER** a
9 license issued under the general sales tax act, 1933 PA 167, MCL
10 205.51 to 205.78, shall not knowingly do any of the following:

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

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

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

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

20 **(E) SELL ANY PRODUCT DESCRIBED UNDER THIS SUBSECTION TO AN**
21 **INDIVIDUAL DURING THE PERIOD IN WHICH A STOP SALE ALERT IS**
22 **GENERATED FOR THAT INDIVIDUAL BASED UPON CRIMINAL HISTORY RECORD**
23 **INFORMATION PROVIDED UNDER THE METHAMPHETAMINE ABUSE REPORTING ACT.**

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

1 form if pseudoephedrine is not the only active ingredient.

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

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

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

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

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

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

16 Enacting section 1. This amendatory act takes effect January
17 1, 2015.

18 Enacting section 2. This amendatory act does not take effect
19 unless Senate Bill No. 535 of the 97th Legislature is enacted into
20 law.