

HOUSE BILL No. 6339

September 6, 2018, Introduced by Rep. LaFave and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled "Public health code," by amending sections 7220, 7340, and 17708 (MCL 333.7220, 333.7340, and 333.17708), section 7220 as amended by 1999 PA 144, section 7340 as added by 2006 PA 261, and section 17708 as amended by 2016 PA 499; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7220. (1) The following controlled substances are
2 included in schedule 5:

3 (a) The following drugs and other substances, by whatever
4 official name, common or usual name, chemical name, or brand name
5 designated:

6 Loperamide

7 (b) Any compound, mixture, or preparation containing any of
8 the following limited quantities of narcotic drugs or salts of

1 narcotic drugs, which includes 1 or more nonnarcotic active
2 medicinal ingredients in sufficient proportion to confer upon the
3 compound, mixture, or preparation valuable medicinal qualities
4 other than those possessed by the narcotic drug alone:

5 (i) Not more than 200 milligrams of codeine, or any of its
6 salts, per 100 milliliters or per 100 grams and not more than 10
7 milligrams per dosage unit.

8 (ii) Not more than 100 milligrams of dihydrocodeine, or any of
9 its salts, per 100 milliliters or per 100 grams and not more than 5
10 milligrams per dosage unit.

11 (iii) Not more than 100 milligrams of ethylmorphine, or any of
12 its salts, per 100 milliliters or per 100 grams and not more than 5
13 milligrams per dosage unit.

14 (iv) Not more than 2.5 milligrams of diphenoxylate and not
15 less than 25 micrograms of atropine sulfate per dosage unit.

16 (v) Not more than 100 milligrams of opium per 100 milliliters
17 or per 100 grams and not more than 5 milligrams per dosage unit.

18 (c) Except as otherwise provided in this subdivision,
19 ephedrine, a salt of ephedrine, an optical isomer of ephedrine, a
20 salt of an optical isomer of ephedrine, or a compound, mixture, or
21 preparation containing ephedrine, a salt of ephedrine, an optical
22 isomer of ephedrine, or a salt of an optical isomer of ephedrine.
23 However, the following are not included in schedule 5:

24 (i) A product containing ephedrine, a salt of ephedrine, an
25 optical isomer of ephedrine, or a salt of an optical isomer of
26 ephedrine if the drug product may lawfully be sold over the counter
27 without a prescription under federal law, is labeled and marketed

1 in a manner consistent with the pertinent OTC tentative final or
2 final monograph, is manufactured and distributed for legitimate
3 medical use in a manner that reduces or eliminates the likelihood
4 for abuse, and is not marketed, advertised, or labeled for an
5 indication of stimulation, mental alertness, energy, weight loss,
6 appetite control, or muscle enhancement and if the drug product is
7 1 of the following:

8 (A) A solid dosage form, including but not limited to a soft
9 gelatin caplet, that combines as active ingredients not less than
10 400 milligrams of guaifenesin and not more than 25 milligrams of
11 ephedrine per dose, packaged in blister packs with not more than 2
12 tablets or caplets per blister.

13 (B) An anorectal preparation containing not more than 5%
14 ephedrine.

15 (ii) A food product or a dietary supplement containing
16 ephedrine, if the food product or dietary supplement meets all of
17 the following criteria:

18 (A) It contains, per dosage unit or serving, not more than the
19 lesser of 25 milligrams of ephedrine alkaloids or the maximum
20 amount of ephedrine alkaloids provided in applicable regulations
21 adopted by the United States ~~feed~~**FOOD** and ~~drug administration~~**DRUG**
22 **ADMINISTRATION** and contains no other controlled substance.

23 (B) It contains no hydrochloride or sulfate salts of ephedrine
24 alkaloids.

25 (C) It is packaged with a prominent label securely affixed to
26 each package that states the amount in milligrams of ephedrine in a
27 serving or dosage unit; the amount of the food product or dietary

1 supplement that constitutes a serving or dosage unit; that the
 2 maximum recommended dosage of ephedrine for a healthy adult human
 3 is the lesser of 100 milligrams in a 24-hour period or the maximum
 4 recommended dosage or period of use provided in applicable
 5 regulations adopted by the United States ~~feed~~**FOOD** and ~~drug~~
 6 ~~administration~~**DRUG ADMINISTRATION**; and that improper use of the
 7 product may be hazardous to a person's health.

8 (2) Inclusion of the substances described in subsection (1)(c)
 9 into schedule 5 does not preclude prosecution for a crime involving
 10 those schedule 5 substances under **FORMER** section 17766c.

11 Sec. 7340. (1) A person shall not sell, distribute, deliver,
 12 or otherwise furnish a product that contains any compound, mixture,
 13 or preparation containing any detectable quantity of ephedrine or
 14 pseudoephedrine, a salt or optical isomer of ephedrine or
 15 pseudoephedrine, or a salt of an optical isomer of ephedrine or
 16 pseudoephedrine to an individual if the sale is transacted through
 17 use of the mail, internet, telephone, or other electronic means.

18 (2) This section does not apply to any of the following:

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

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

23 **(A)** ~~(c)~~ A product that the ~~state~~**MICHIGAN** board of pharmacy,
 24 upon application of the manufacturer or certification by the United
 25 States ~~drug enforcement administration~~**DRUG ENFORCEMENT**
 26 **ADMINISTRATION** as inconvertible, exempts from this section because
 27 the product has been formulated in such a way as to effectively

1 prevent the conversion of the active ingredient into
2 methamphetamine.

3 (B) ~~(d)~~—A person who dispenses a product described in
4 subsection (1) pursuant to a prescription.

5 (C) ~~(e)~~—A person who, in the course of his or her business,
6 sells or distributes products described in subsection (1) to ~~either~~
7 ~~of the following:~~

8 ~~—— (i) A~~ **A** person licensed by this state to manufacture, deliver,
9 dispense, or possess with intent to manufacture or deliver a
10 controlled substance, prescription drug, or other drug.

11 ~~—— (ii) A person who orders those products described in~~
12 ~~subsection (1) for retail sale pursuant to a license issued under~~
13 ~~the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.~~

14 (D) ~~(f)~~—A manufacturer or distributor who donates product
15 samples to a nonprofit charitable organization that has tax-exempt
16 status ~~pursuant to~~ **UNDER** section 501(c)(3) of the internal revenue
17 code of 1986, **26 USC 501**, a licensed practitioner, or a
18 governmental entity.

19 (3) A person who violates this section is guilty of a felony
20 punishable by imprisonment for not more than 4 years or a fine of
21 not more than \$5,000.00, or both.

22 Sec. 17708. (1) "Preceptor" means a pharmacist approved by the
23 board to direct the training of an intern in an approved pharmacy.

24 (2) "Prescriber" means a licensed dentist, a licensed doctor
25 of medicine, a licensed doctor of osteopathic medicine and surgery,
26 a licensed doctor of podiatric medicine and surgery, a licensed
27 physician's assistant, a licensed optometrist certified under part

1 174 to administer and prescribe therapeutic pharmaceutical agents,
2 an advanced practice registered nurse as that term is defined in
3 section 17201 who meets the requirements of section 17211a, a
4 licensed veterinarian, or another licensed health professional
5 acting under the delegation and using, recording, or otherwise
6 indicating the name of the delegating licensed doctor of medicine
7 or licensed doctor of osteopathic medicine and surgery.

8 (3) "Prescription" means an order by a prescriber to fill,
9 compound, or dispense a drug or device written and signed; written
10 or created in an electronic format, signed, and transmitted by
11 facsimile; or transmitted electronically or by other means of
12 communication. An order transmitted in other than written or hard-
13 copy form must be electronically recorded, printed, or written and
14 immediately dated by the pharmacist, and that record is considered
15 the original prescription. In a health facility or agency licensed
16 under article 17 or other medical institution, an order for a drug
17 or device in the patient's chart is considered for the purposes of
18 this definition the original prescription. For purposes of this
19 part, prescription also includes a standing order issued under
20 section 17744e. Subject to section 17751(2) and (5), prescription
21 includes, but is not limited to, an order for a drug, not including
22 a controlled substance except under circumstances described in
23 section 17763(e), written and signed; written or created in an
24 electronic format, signed, and transmitted by facsimile; or
25 transmitted electronically or by other means of communication by a
26 physician prescriber, dentist prescriber, or veterinarian
27 prescriber who is licensed to practice dentistry, medicine,

1 osteopathic medicine and surgery, or veterinary medicine in another
2 state.

3 (4) "Prescription drug" means ~~a drug to which~~ 1 or more of the
4 following: ~~apply:~~

5 (a) ~~The~~ **A** drug **THAT** is dispensed pursuant to a prescription.

6 (b) ~~The~~ **A** drug **THAT** bears the federal legend "CAUTION: federal
7 law prohibits dispensing without prescription" or "Rx only".

8 (c) ~~The~~ **A** drug **THAT** is designated by the board as a drug that
9 may only be dispensed pursuant to a prescription.

10 **(D) EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OR OPTICAL ISOMER OF**
11 **EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OF AN OPTICAL ISOMER OF**
12 **EPHEDRINE OR PSEUDOEPHEDRINE, OR A COMPOUND, MIXTURE, OR**
13 **PREPARATION CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE, A SALT OF**
14 **EPHEDRINE OR PSEUDOEPHEDRINE, AN OPTICAL ISOMER OF EPHEDRINE OR**
15 **PSEUDOEPHEDRINE, OR A SALT OF AN OPTICAL ISOMER OF EPHEDRINE OR**
16 **PSEUDOEPHEDRINE.**

17 Enacting section 1. Sections 7340a, 17766c, 17766e, and 17766f
18 of the public health code, 1978 PA 368, MCL 333.7340a, 333.17766c,
19 333.17766e, and 333.17766f, are repealed.

20 Enacting section 2. This amendatory act takes effect 90 days
21 after the date it is enacted into law.

22 Enacting section 3. This amendatory act does not take effect
23 unless all of the following bills of the 99th Legislature are
24 enacted into law:

25 (a) Senate Bill No. _____ or House Bill No. 6340 (request no.
26 04955'17 a).

27 (b) Senate Bill No. _____ or House Bill No. 6341 (request no.

1 04955'17 b) .