

SENATE BILL No. 41

January 22, 2003, Introduced by Senators HAMMERSTROM, PATTERSON, KUIPERS, LELAND, BRATER, GOSCHKA, SCHAUER, JACOBS and HARDIMAN and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 17748a, 17748b, 17748c, 17748d, 17748e, 17748f, 17748g, 17748h, 17748i, 17748j, 17748k, 17748l, 17748m, 17748n, 17748o, 17748p, 17748q, 17748r, 17748s, 17748t, and 17748u.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17748a. As used in this section and in sections 17748b
2 to 17748u:

3 (a) "Agent" means a person who engages in a regulated
4 activity on behalf of another person. Agent includes an outside
5 salesperson, sales representative, pharmaceutical representative,
6 detailer, medical education and communications company, sales
7 agent, sales specialist, account executive, or account manager.
8 Agent includes a distributor, dispenser, or prescriber when

1 acting for a manufacturer or an agent. Agent does not include
2 the following:

3 (i) A common or contract carrier, warehouse, or employee of
4 the carrier or warehouse.

5 (ii) A publisher, owner, or working member of the press,
6 radio, or television while disseminating news or editorial
7 comment to the general public in the ordinary course of
8 business.

9 (iii) An elected or appointed public official of state or
10 local government who is acting in the course or scope of the
11 office for no compensation, other than that provided by law for
12 the office.

13 (b) "Business" means a corporation, partnership, sole
14 proprietorship, firm, enterprise, franchise, association,
15 organization, self-employed individual, holding company, joint
16 stock company, receivership, trust, activity, or entity that is
17 organized for profit or nonprofit purposes.

18 (c) "Business with which the prescriber is associated" means
19 a business in which any of the following apply:

20 (i) The prescriber is a partner, director, officer, or
21 employer.

22 (ii) A member of the prescriber's immediate family is a
23 partner, director, officer, or employer.

24 (iii) The prescriber or a member of the prescriber's
25 immediate family is a stockholder of close corporation stock
26 worth \$1,000.00 or more at fair market value or which represents
27 more than 5% equity interest, or is a stockholder of publicly

1 traded stock worth \$10,000.00 or more at fair market value or
2 which represents more than 10% equity interest. This subdivision
3 does not apply to publicly traded stock under a trading account
4 if the filer reports the name and address of the stockbroker.

5 (d) "Compensation" means a payment of money, objects,
6 services, or anything of monetary value received or to be
7 received from a person, whether in the form of a fee, salary,
8 forbearance, forgiveness, or another form of recompense.

9 (e) "Department" means the department of consumer and
10 industry services or a successor department.

11 (f) "Expenditure" means compensation for labor or an advance,
12 honorarium, speaker's fee, conveyance, gift, deposit,
13 distribution, transfer of money, loan, payment, pledge,
14 subscription of money, or anything of value, including a
15 contract, agreement, promise, or other obligation, whether or not
16 legally enforceable.

17 (g) "Financial transaction" means a purchase, sale, or other
18 type of transfer or exchange of money, goods, other property, or
19 services for consideration of substantially equal or greater
20 value.

21 (h) "Gift" means a payment, advance, forbearance, loan, or
22 the tendering or deposit of money, services, or anything of
23 value, the cumulative value of which exceeds \$47.00 in any 1
24 month period, unless consideration of equal or greater value is
25 received. Gift does not include any of the following:

26 (i) Anything of value received from a member of the
27 recipient's immediate family, a relative, or a relative of a

1 spouse, within the seventh degree of consanguinity as computed by
2 the civil law method, or the spouse of such a relative.

3 (ii) A breakfast, luncheon, dinner, or other refreshment
4 consisting of food and beverage provided for immediate
5 consumption.

6 (i) "Immediate family" means an individual's child residing
7 in the individual's household, a spouse of an individual, or an
8 individual claimed by that individual or that individual's spouse
9 as a dependent for federal income tax purposes.

10 (j) "Loan" means a transfer of money, property, or anything
11 of ascertainable value in exchange for an obligation, conditional
12 or not, to repay in whole or in part. Loan does not include a
13 transfer made in the normal course of business by an institution
14 as defined in section 1202 of the banking code of 1999, 1999
15 PA 276, MCL 487.11202, a national bank, a branch bank, an
16 insurance company issuing a loan or receiving a mortgage in the
17 normal course of business, a premium finance company, a mortgage
18 company, a small loan company, a state or federal credit union, a
19 savings and loan association chartered by this state or the
20 federal government, or a licensee as defined by section 2 of the
21 motor vehicles sales finance act, 1950 (Ex Sess) PA 27,
22 MCL 492.102.

23 (k) "Manufacturer" means that term as defined in section
24 17706.

25 (l) "Prescriber" means that term as defined in section
26 17708(2).

27 (m) "Regulated activity" means sale, offer for sale,

1 promotion, detailing, recommendation of purchase, informational
2 contact, communication for the purpose of inducing a sale, or
3 similar conduct concerning a controlled substance or a drug or
4 device salable on prescription only.

5 Sec. 17748b. Not later than 15 days after becoming a
6 manufacturer, the manufacturer shall file a registration on a
7 form or in a manner specified by the department. The
8 registration shall contain the following information:

9 (a) The manufacturer's name and office address.

10 (b) The name and address of each person employed, reimbursed
11 for expenses that exceed \$19.00, or given compensation by the
12 manufacturer for performing a regulated activity in this state.

13 (c) The name, address, and nature of business of each person
14 that gives compensation to the manufacturer or the agent of a
15 manufacturer for regulated activities.

16 (d) The fiscal year of the manufacturer.

17 Sec. 17748c. Not later than 3 days after becoming an agent,
18 the agent shall file a registration on a form or in a manner
19 specified by the department. The registration shall contain the
20 following information:

21 (a) If the agent is not an individual, the agent's name and
22 office address.

23 (b) If the agent is an individual, the agent's name,
24 permanent residence address, and office address.

25 (c) The name and address of each person employed, reimbursed
26 for expenses that exceed \$19.00, or given compensation by the
27 agent for a regulated activity in this state.

1 (d) The name, address, and nature of business of each person
2 who gives compensation to or reimburses the agent or the
3 representative of an agent for regulated activities.

4 Sec. 17748d. A manufacturer or agent that fails to register
5 under section 17748b or 17748c shall pay a late registration fee
6 of \$19.00 for each day the manufacturer or agent remains not
7 registered in violation of section 17748b or 17748c, not to
8 exceed \$570.00. In addition to the late registration fee, a
9 manufacturer or agent that fails to register under section 17748b
10 or 17748c for more than 30 days is guilty of a misdemeanor
11 punishable by a fine of not more than \$1,000.00.

12 Sec. 17748e. A person required to register under
13 section 17748b or 17748c shall file a notice of termination with
14 the department within 30 days after ceasing regulated
15 activities. Filing a termination notice does not release the
16 person required to register under section 17748b or 17748c from
17 the reporting requirements for that reporting period. An agent
18 shall file a notice of termination with the department within 30
19 days after any agency relationship is terminated, concerning the
20 terminated agency relationship.

21 Sec. 17748f. (1) A manufacturer, or an agent on behalf of a
22 manufacturer, shall file a signed report on a form or in a manner
23 specified by the department. A report shall be filed on or
24 before August 31 covering the 6 months ending on July 31 and on
25 or before January 31 covering the entire calendar year ending on
26 the immediately preceding December 31.

27 (2) A manufacturer or agent may request from the department

1 an extension of the deadline for filing a report under
2 subsection (1) for a period not to exceed 60 days. Within 9 days
3 after receipt of a request, the department shall respond in
4 writing, either approving or disapproving the extension. If
5 approved, the department shall include in its response the period
6 of the extension. A manufacturer or agent may file an amended
7 report within 1 year after the filing deadline, including an
8 extension period.

9 Sec. 17748g. A report required under section 17748f shall
10 be submitted on a form or in a manner specified by the
11 department. The report shall include an account of each
12 expenditure made by the manufacturer and agent. The expenditures
13 shall be grouped by prescriber and shall be reported by category,
14 with the report showing the total amount expended in each
15 category during the preceding reporting period and the cumulative
16 amount expended in each category for the current year from
17 January 1 through the month covered by the report. Expenditures
18 shall be reported in the following categories:

19 (a) Expenditures for food, beverages, and entertainment
20 provided for prescribers.

21 (b) Expenditures made or incurred by a manufacturer or an
22 agent, other than expenditures made or incurred by a manufacturer
23 or an agent of less than \$10.00 made for or on behalf of a
24 prescriber for goods or services for which a receipt or proof of
25 purchase is not normally available.

26 (c) Expenditures during the immediately preceding reporting
27 period by the manufacturer or agent for or on behalf of a

1 prescriber that involved goods or services having a value of at
2 least \$950.00 or that involved travel or lodging expenses paid
3 for or reimbursed to a prescriber in excess of \$625.00. The
4 account shall include the date and nature of the expenditure, the
5 parties to the transaction, and the amount involved.

6 Sec. 17748h. Sections 17748f and 17748g do not apply to the
7 following:

8 (a) A financial transaction undertaken in the ordinary
9 course of the manufacturer's business, unless the manufacturer
10 gives the prescriber a preferential interest rate, payment due
11 date, or time price differential solely because the prescriber is
12 using or ordering a specific controlled substance or drug or
13 device salable on prescription only.

14 (b) The giving of complimentary starter doses.

15 Sec. 17748i. (1) For travel or lodging expenses described
16 in section 17748g, the manufacturer or agent shall prepare a
17 separate document listing the expenditures. Simultaneously with
18 the filing of the report to the department, the manufacturer or
19 agent shall send a copy of the document to the affected
20 prescriber.

21 (2) Expenditures for food, beverages, and entertainment
22 provided a prescriber shall be reported if the expenditures for
23 that prescriber exceed \$47.00 in any month covered by the report
24 or \$300.00 during that calendar year beginning January 1 through
25 the month covered by the report. The report shall include the
26 name and office address of the prescriber and the expenditures
27 for that prescriber for the year. If more than 1 prescriber is

1 provided food, beverages, and entertainment for months covered by
2 the report and a single payment is made, the report may reflect
3 the average amount of the payment for each prescriber.

4 (3) If the expenditures are for an event that more than 25
5 prescribers attended or an event to which an identifiable group
6 of prescribers were invited, the expenditures shall be reported,
7 grouped by event, if the total expenditures exceed \$475.00 in any
8 month covered by the report or \$1,000.00 during that calendar
9 year from January 1 through the month covered by the report. A
10 manufacturer or an agent shall report the total amount expended
11 on the group of prescribers in attendance for food, beverages,
12 and entertainment and is not required to report the amount
13 expended on the prescribers individually. In reporting those
14 amounts, the manufacturer or agent shall provide a description by
15 category of the persons in attendance and the nature of each
16 event or function held during the preceding reporting period.

17 (4) If an agent employs another agent to engage in regulated
18 activities, the activities of the employee agent shall be
19 reported by the employer agent under this section.

20 Sec. 17748j. The department shall preserve a report filed
21 under section 17748f for 5 years after filing. A report may be
22 reproduced as authorized in the records media act, 1992 PA 116,
23 MCL 24.401 to 24.403. After the required preservation period, a
24 report, or a reproduction of the report, other than those
25 necessary to complete an investigation by the attorney general or
26 pertinent to a matter being adjudicated in a court of law, or
27 otherwise required by law to be retained, shall be destroyed.

1 Sec. 17748k. (1) Information copied from any of the
2 following shall not be sold or utilized for a commercial
3 purpose:

4 (a) A registration form required by section 17748b or
5 17748c.

6 (b) A report required by section 17748f.

7 (c) A list compiled from the forms or reports.

8 (2) A person who violates this section is subject to a civil
9 penalty of not more than \$1,000.00.

10 Sec. 17748l. (1) A manufacturer or an agent shall obtain
11 and preserve accounts, bills, receipts, books, papers, and
12 documents necessary to substantiate a report required by section
13 17748f for 5 years after the report is filed. The manufacturer
14 or agent shall make these records available for inspection upon
15 request by the department after reasonable notice. The records
16 shall include the following:

17 (a) An account of each expenditure made to or for a
18 prescriber. A single expenditure of \$100.01 or more shall be
19 recorded separately with the record showing the date, purpose,
20 and name and address of the recipient of the expenditure.

21 (b) An itemized account of each expenditure for food,
22 beverages, and entertainment provided for a prescriber. The
23 account shall state the date and amount of each expenditure, the
24 name and title of the prescriber for whom the expenditure was
25 made, and the name of the agent who purchased the food,
26 beverages, or entertainment for the prescriber. If, however,
27 more than 1 prescriber is provided food, beverages, and

1 entertainment and payment is made through an undivided
2 transaction, the account may reflect the average amount expended
3 for each prescriber.

4 (c) The amount expended for food, beverages, and
5 entertainment for prescribers at an event that more than 25
6 prescribers attended or an event to which an identifiable group
7 of prescribers were invited. The record shall not list the
8 expenditures for prescribers individually. The manufacturer
9 shall record the names of each prescriber that actually attended
10 and the nature of each event held.

11 (2) An individual who violates this section is guilty of a
12 misdemeanor punishable by a fine of not more than \$1,000.00 or
13 imprisonment for not more than 90 days, or both. A person other
14 than an individual who violates this section is guilty of a
15 misdemeanor punishable by a fine of not more than \$10,000.00.

16 Sec. 17748m. A person who, without good cause, fails to
17 report under section 17748f shall pay a late filing fee of \$19.00
18 for each day the report remains not filed, not to exceed
19 \$570.00. In addition to the late filing fee, a person who,
20 without good cause, is in violation more than 30 days is guilty
21 of a misdemeanor punishable by a fine of not more than \$1,000.00.

22 Sec. 17748n. (1) An agent who is compensated, reimbursed,
23 or otherwise employed by a manufacturer for performing a
24 regulated activity shall provide to the employing manufacturer a
25 full accounting of each regulated activity and expenditure
26 required to be reported under the registration, reporting, and
27 record-keeping requirements of sections 17748b to 17748/ at least

1 10 days before the employing manufacturer's report is due to be
2 filed. If the agent files the report on behalf of the
3 manufacturer, this accounting is waived.

4 (2) A person who violates this subsection is guilty of a
5 misdemeanor punishable by a fine of not more than \$1,000.00.

6 Sec. 17748o. (1) A manufacturer or agent or anyone acting
7 on behalf of a manufacturer or agent shall not give a gift to a
8 prescriber.

9 (2) An individual who gives a gift in violation of this
10 section with a value of \$3,000.00 or less is guilty of a
11 misdemeanor punishable by a fine of not more than \$5,000.00 or
12 imprisonment for not more than 90 days, or both. A person other
13 than an individual shall be fined not more than \$10,000.00.

14 (3) An individual who gives a gift in violation of this
15 section with a value of more than \$3,000.00 is guilty of a felony
16 punishable by a fine of not more than \$10,000.00 or imprisonment
17 for not more than 3 years, or both. A person other than an
18 individual shall be punished by a fine of not more than
19 \$25,000.00.

20 Sec. 17748p. (1) Effective January 1, 2004 and each year
21 thereafter, the monetary amounts established in sections 17748a
22 to 17748o for registration and reporting thresholds and for
23 penalties shall be adjusted each January 1 to reflect the annual
24 average percentage increase or decrease in the Detroit consumer
25 price index for all items as reported by the United States
26 department of labor. The adjustment for each year shall be made
27 by comparing the Detroit consumer price index--all items for the

1 12-month period ending the preceding August 30 with the
2 corresponding Detroit consumer price index of 1 year earlier.
3 The percentage increase or decrease shall be multiplied by the
4 current amounts. These results shall be rounded up to the
5 nearest dollar for amounts established on the effective date of
6 this section that are \$100.00 or less, and rounded up to the
7 nearest \$25.00 for amounts established on the effective date of
8 this section that are more than \$100.00, and added to or
9 subtracted from the current monetary amounts as previously
10 adjusted by this section, which shall be the new amounts for that
11 year.

12 (2) An adjustment under this section applies only to
13 expenditures or violations occurring after the date of the
14 adjustment.

15 (3) The department shall determine and announce the adjusted
16 amounts on or before December 15 of each year and shall provide
17 them to each person that requests them.

18 (4) If the consumer price index is unavailable, the
19 department shall make a reasonable approximation.

20 Sec. 17748q. The department shall promulgate rules to
21 implement sections 17748a to 17748u under the administrative
22 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
23 Sections 17748a to 17748u shall not be enforced until after the
24 promulgation of the rules required by this section.

25 Sec. 17748r. Semiannually, the department shall prepare and
26 publish summaries of reports received under the registration,
27 reporting, and record-keeping requirements of sections 17748b to

1 17748/. The summaries shall list the name of each manufacturer
2 and agent. The summaries shall be given wide public
3 dissemination.

4 Sec. 17748s. (1) The department shall determine whether a
5 report that is required to be filed is in fact filed.

6 (2) A report required under the registration, reporting, and
7 record-keeping requirements of sections 17748b to 17748/ shall be
8 filed not later than 4 p.m. of the day on which it is required to
9 be filed. A report that is postmarked by certified mail not less
10 than 2 days before the deadline for filing is considered filed
11 within the prescribed time regardless of when it is actually
12 delivered.

13 (3) Within 10 days after the deadline for filing a report
14 under the registration, reporting, and record-keeping
15 requirements of sections 17748b to 17748/, the department shall
16 give notice to the filer by certified mail of an error or
17 omission in the report and shall give notice to a person whom the
18 department finds probable cause exists that the person is
19 required to file, but who has failed to file, a report. The
20 department's failure to give notice as required by this section
21 is not a defense to a criminal action against a person required
22 to file.

23 (4) Within 20 days after a report is required to be filed,
24 the filer shall make necessary corrections in the report filed
25 with the department.

26 (5) After 30 days have expired after the deadline for filing
27 a report, the department shall report errors or omissions that

1 were not corrected and failures to file to the attorney general.
2 The department shall mail a copy of the notice to the attorney
3 general to the person who was required to file or was required to
4 correct errors or omissions.

5 (6) The department shall conduct investigations and 1 or more
6 hearings as may be necessary to determine if probable cause
7 exists that a violation of the registration, reporting, gift, and
8 record-keeping requirements of sections 17748b to 17748o has
9 occurred. A hearing conducted under this subsection shall be in
10 compliance with the administrative procedures act of 1969, 1969
11 PA 306, MCL 24.201 to 24.328.

12 Sec. 17748t. (1) If the department, upon investigation of a
13 report filed under the registration, reporting, gift, and
14 record-keeping requirements of sections 17748b to 17748o,
15 determines that there is probable cause to believe a violation of
16 the registration, reporting, gift, and record-keeping
17 requirements of sections 17748b to 17748o occurred, the
18 department shall forward the results of that investigation to the
19 attorney general for enforcement.

20 (2) A sworn complaint alleging a violation of the
21 registration, reporting, gift, and record-keeping requirements of
22 sections 17748b to 17748o shall be filed with the department.
23 Upon receipt of a sworn complaint, the attorney general shall
24 determine whether there is probable cause that there was a
25 violation of the registration, reporting, gift, and
26 record-keeping requirements of sections 17748b to 17748o. Notice
27 shall be given to a person within 5 days after a sworn complaint

1 is filed against that person. Notice shall include a copy of the
2 sworn complaint. Every 60 days after the date of a request for
3 an investigation and until the matter is terminated, the attorney
4 general shall mail to the complainant and to the alleged violator
5 notice of the action taken to date by the attorney general,
6 together with the reasons for the action or nonaction. If it is
7 determined that there is no probable cause that a violation of
8 the registration, reporting, gift, and record-keeping
9 requirements of sections 17748b to 17748o did occur, the attorney
10 general shall immediately give notice to the complainant and to
11 the person previously given notice under this section.

12 (3) All governmental bodies shall cooperate with the
13 department of attorney general in the conduct of its
14 investigations.

15 Sec. 17748u. The attorney general, upon investigation and
16 determination that the registration, reporting, gift, and
17 record-keeping requirements of sections 17748b to 17748o were
18 violated, shall do either or both of the following:

19 (a) Initiate a civil action to enforce the registration,
20 reporting, and record-keeping requirements of sections 17748b to
21 17748l.

22 (b) Begin criminal prosecution for the imposition of criminal
23 penalties.