

SENATE BILL NO. 324

May 03, 2023, Introduced by Senators BAYER, POLEHANKI, CAVANAGH, GEISS, CHANG and WOJNO and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1978 PA 368, entitled "Public health code," by amending section 17764 (MCL 333.17764), as amended by 2004 PA 214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 17764. (1) A person shall not sell, offer for sale,
2 possess for sale, or manufacture for sale a drug or device bearing
3 or accompanied by a label that is misleading as to the contents,
4 uses, or purposes of the drug or device. A person who violates this

1 subsection is guilty of a misdemeanor. In determining whether a
2 label is misleading, consideration ~~shall~~**must** be given to the
3 representations made or suggested by the statement, word, design,
4 device, sound, or any combination thereof, and the extent to which
5 the label fails to reveal facts material in view of the
6 representations made or material as to consequences that may result
7 from use of the drug or device to which the label relates under
8 conditions of use prescribed in the label or under customary or
9 usual conditions of use.

10 (2) A person shall not knowingly or recklessly do either of
11 the following:

12 (a) Adulterate, misbrand, remove, or substitute a drug or
13 device knowing or intending that the drug or device ~~shall~~**will** be
14 used.

15 (b) Sell, offer for sale, possess for sale, cause to be sold,
16 or manufacture for sale an adulterated or misbranded drug.

17 (3) Except as otherwise provided in this section, a person who
18 violates subsection (2) is guilty of a felony punishable by
19 imprisonment for not more than 2 years or a fine of not more than
20 \$1,000.00, or both.

21 (4) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
22 ~~results~~**resulting** in personal injury, **the person** is guilty of a
23 felony punishable by imprisonment for not more than 4 years or a
24 fine of not more than \$4,000.00, or both.

25 (5) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
26 ~~results~~**resulting** in serious impairment of a body function, **the**
27 **person** is guilty of a felony punishable by imprisonment for not
28 more than 5 years or a fine of not more than \$5,000.00, or both. As
29 used in this subsection, "serious impairment of a body function"

1 means that term as defined in section 58c of the Michigan vehicle
2 code, 1949 PA 300, MCL 257.58c.

3 (6) ~~A~~**If a person who** violates subsection (2), ~~which violation~~
4 ~~results~~**resulting** in death, **the person** is guilty of a felony
5 punishable by imprisonment for not more than 15 years or a fine of
6 not more than \$20,000.00, or both.

7 (7) ~~A~~**Except as provided in sections 25 and 25a of chapter IX**
8 **of the code of criminal procedure, 1927 PA 175, MCL 769.25 and**
9 **769.25a, and subject to subsection (9), if a person who** violates
10 subsection (2) with the intent to kill or to cause serious
11 impairment of a body function of 2 or more individuals, ~~which~~**and**
12 **the** violation results in death, **the person** is guilty of a felony
13 punishable by imprisonment for life without the possibility of
14 parole or life without the possibility of parole and a fine of not
15 more than \$40,000.00. It is not a defense to a charge under this
16 subsection that the person did not intend to kill a specific
17 individual, or did not intend to cause serious impairment of a body
18 function of 2 or more specific individuals.

19 (8) This section does not prohibit an individual from being
20 charged with, convicted of, or punished for any other violation of
21 law that is committed by that individual while violating this
22 section.

23 (9) **The mandatory sentences provided for under subsection (7)**
24 **do not apply to a resentencing conducted under sections 27a to 27h**
25 **of chapter IX of the code of criminal procedure, 1927 PA 175, MCL**
26 **769.27a to 769.27h.**

27 Enacting section 1. This amendatory act does not take effect
28 unless Senate Bill No. 321 of the 102nd Legislature is enacted into
29 law.