

**SUBSTITUTE FOR  
HOUSE BILL NO. 4161**

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~~**that** violates  
5 this subsection is guilty of a misdemeanor. In determining whether  
6 a label is misleading, consideration ~~shall~~**must** be given to the  
7 representations made or suggested by the statement, word, design,  
8 device, sound, or any combination thereof, and the extent to which



1 the label fails to reveal facts material in view of the  
2 representations made or material as to consequences that may result  
3 from use of the drug or device to which the label relates under  
4 conditions of use prescribed in the label or under customary or  
5 usual conditions of use.

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

8 (a) Adulterate, misbrand, remove, or substitute a drug or  
9 device knowing or intending that the drug or device ~~shall~~ be used.

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

12 (3) Except as otherwise provided in this section, a person ~~who~~  
13 **that** violates subsection (2) is guilty of a felony punishable by  
14 imprisonment for not more than 2 years or a fine of not more than  
15 \$1,000.00, or both.

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

20 (5) ~~A~~ **If a person who** violates subsection (2), ~~which violation~~  
21 ~~results~~ **resulting** in serious impairment of a body function, **the**  
22 **person** is guilty of a felony punishable by imprisonment for not  
23 more than 5 years or a fine of not more than \$5,000.00, or both. As  
24 used in this subsection, "serious impairment of a body function"  
25 means that term as defined in section 58c of the Michigan vehicle  
26 code, 1949 PA 300, MCL 257.58c.

27 (6) ~~A~~ **If a person who** violates subsection (2), ~~which violation~~  
28 ~~results~~ **resulting** in death, **the person** is guilty of a felony  
29 punishable by imprisonment for not more than 15 years or a fine of



1 not more than \$20,000.00, or both.

2 (7) ~~A-Except as provided for a person who was less than 19~~  
3 ~~years of age at the time of the violation, if a person who violates~~  
4 subsection (2) with the intent to kill or to cause serious  
5 impairment of a body function of 2 or more individuals ~~, which and~~  
6 ~~the violation results in death, the person~~ is guilty of a felony  
7 punishable by imprisonment for life without the possibility of  
8 parole or life without the possibility of parole and a fine of not  
9 more than \$40,000.00. **If the violation of subsection (2) was**  
10 **committed by a person who was less than 19 years of age at the time**  
11 **of the violation and with the intent to kill or to cause serious**  
12 **impairment of a body function of 2 or more individuals and the**  
13 **violation results in death, the person is guilty of a felony and**  
14 **shall be punished by imprisonment with a minimum term of not less**  
15 **than 20 years and maximum term of not more than 60 years and a fine**  
16 **of not more than \$40,000.00.** It is not a defense to a charge under  
17 this subsection that the person did not intend to kill a specific  
18 individual, or did not intend to cause serious impairment of a body  
19 function of 2 or more specific individuals.

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

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

26 Enacting section 2. This amendatory act does not take effect  
27 unless all of the following bills of the 102nd Legislature are  
28 enacted into law:

29 (a) House Bill No. 4160.



- 1 (b) House Bill No. 4162.
- 2 (c) House Bill No. 4163.
- 3 (d) House Bill No. 4164.

