

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 838

1 AN ACT TO CREATE THE "MISSISSIPPI TIANEPTINE CONSUMER
2 PROTECTION ACT"; TO DEFINE CERTAIN TERMS RELATING TO THE ACT; TO
3 PROHIBIT A PROCESSOR OR RETAILER FROM PREPARING, DISTRIBUTING,
4 SELLING, OR EXPOSING FOR SALE EITHER A TIANEPTINE EXTRACT THAT
5 CONTAINS CERTAIN LEVELS OF RESIDUAL, OR A TIANEPTINE PRODUCT THAT
6 DOES NOT HAVE ADEQUATE LABELING DIRECTIONS NECESSARY FOR SAFE AND
7 EFFECTIVE USE BY CONSUMERS; TO PROVIDE THAT IT IS UNLAWFUL FOR ANY
8 MINOR TO PURCHASE, USE, POSSESS, OR TRANSPORT A PRODUCT CONTAINING
9 TIANEPTINE WITHIN THE STATE; TO REQUIRE ANY PERSON WHO DISTRIBUTES
10 TIANEPTINE PRODUCTS WITHIN THIS STATE TO POST CONSPICUOUSLY AT
11 EACH LOCATION OF DISTRIBUTION A SIGN THAT IS PLACED IN SUCH A
12 MANNER THAT IT IS LIKELY TO BE READ BY THOSE SEEKING TO PURCHASE
13 OR OBTAIN TIANEPTINE PRODUCTS; TO PROVIDE CIVIL PENALTIES FOR
14 VIOLATIONS OF THIS ACT; TO REQUIRE THE DIVISION TO ADOPT RULES AND
15 REGULATIONS FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT; TO
16 BRING FORWARD SECTION 67-1-37, MISSISSIPPI CODE OF 1972, WHICH
17 RELATES TO THE POWERS AND DUTIES OF THE DIVISION, FOR PURPOSES OF
18 POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** This act shall be known and may be cited as the
21 "Mississippi Tianeptine Consumer Protection Act".

22 **SECTION 2.** For the purposes of this act, the following words
23 shall have the meanings as defined in this section, unless the
24 context clearly indicates otherwise:

25 (a) "Division" means the Alcoholic Beverage Control
26 Division of the Department of Revenue.



27 (b) "Food" means a food, food product, food ingredient,
28 dietary ingredient, dietary supplement, or beverage for human
29 consumption.

30 (c) "Minor" means a person under the age of twenty-one
31 (21) years.

32 (d) "Processor" means a person who sells, prepares,
33 manufactures, distributes, or maintains tianeptine products or
34 advertises, represents, or holds him or herself out as selling,
35 preparing, or maintaining tianeptine products.

36 (e) "Retailer" means any person who sells, distributes,
37 advertises, represents, or holds him or herself out as selling or
38 maintaining tianeptine products.

39 (f) "Tianeptine product" means a food product or
40 dietary ingredient containing tianeptine, and is manufactured as a
41 powder, capsule, pill, beverage, or other edible form.

42 **SECTION 3.** (1) A processor or retailer may not prepare,
43 distribute, sell, or expose for sale either of the following:

44 (a) A tianeptine extract that contains levels of
45 residual solvents higher than is allowed in United States
46 Pharmacopeia's USP 467.

47 (b) A tianeptine product that does not have adequate
48 labeling directions necessary for safe and effective use by
49 consumers, including a recommended serving size.

50 (2) A processor or retailer does not violate this section if
51 it is shown by a preponderance of the evidence that the processor



52 or retailer relied in good faith upon the representations of a
53 manufacturer, processor, packer, or distributor of food
54 represented to be a tianeptine product.

55 **SECTION 4.** (1) It is unlawful for any minor to purchase,
56 use, possess, or transport a product containing tianeptine within
57 this state. It is not unlawful for a minor employee of a retailer
58 to handle, transport, or sell a tianeptine product if the minor
59 employee is acting within the line and scope of employment and the
60 retailer, or an employee of the permit holder who is twenty-one
61 (21) years of age or older, is present.

62 (2) A tianeptine product shall not be distributed at retail
63 through a self-service display.

64 (3) A retailer shall keep or store a tianeptine product by
65 placing such product behind the counter in an area within the
66 store where the public is not permitted.

67 **SECTION 5.** Any person who distributes tianeptine products
68 within this state shall post conspicuously and keep so posted at
69 each location of distribution a sign that is placed in such a
70 manner that it is likely to be read by those seeking to purchase
71 or obtain tianeptine products. Each such sign shall state both of
72 the following:

73 (a) Mississippi law strictly prohibits the purchase of
74 tianeptine products by persons under the age of twenty-one (21).

75 (b) Proof of age is required for the purchase of
76 tianeptine products.



77 **SECTION 6.** The division may assess a civil penalty against a
78 processor or retailer that violates the provisions of this act as
79 follows:

80 (a) Not more than One Thousand Dollars (\$1,000.00) for
81 a first violation.

82 (b) Not more than Two Thousand Five Hundred Dollars
83 (\$2,500.00) for a second or subsequent violation.

84 **SECTION 7.** The division shall adopt rules and regulations
85 for the administration and enforcement of this act, including, but
86 not limited, to the following:

87 (a) A procedure for a tianeptine processor to register
88 and pay an annual registration fee to the division in order to
89 sell tianeptine products. The registration procedure shall
90 require the tianeptine processor to provide information relating
91 to the facility where the tianeptine products were manufactured,
92 the United States Food and Drug Administration registration for
93 the facility, and the registration with the applicable department
94 regulating agriculture, if applicable, for the manufacturing
95 facility where it is originally processed. The information
96 required for registration may also include the following:

97 (i) The name and address of the tianeptine
98 processor, and the name and address of the person whose name will
99 appear on the label, if other than the tianeptine processor;

100 (ii) The names of each tianeptine product included
101 in the registration;



102 (iii) The tianeptine type and recommended usage,
103 including directions for use or serving size for each tianeptine
104 product;

105 (iv) The approved tianeptine delivery form;

106 (v) The weights or volumes, as appropriate, of the
107 package of tianeptine product offered for sale, for the
108 recommended usage for an individual serving size, and for the
109 entire package;

110 (vi) A label may not contain claims that the
111 tianeptine product is intended to diagnose, treat, cure, or
112 prevent any medical condition or disease;

113 (vii) A complete copy of the label that will
114 appear on the tianeptine product or the document that can be
115 reached via scannable bar code, QR Code, or web address;

116 (viii) A written certification that raw materials
117 used in manufacturing tianeptine products made available for sale
118 fully comply with the applicable product limitations in this act;
119 and

120 (ix) A certificate of analysis for the tianeptine
121 product from an independent third-party laboratory holding a
122 current International Organization for Standardization 17025:2017
123 accreditation.

124 (b) Upon demand, a tianeptine processor shall provide
125 to the division its current certificate of analysis for any



126 tianeptine product for which an adverse event is filed, if the
127 division elects to open an investigation.

128 **SECTION 8.** Section 67-1-37, Mississippi Code of 1972, is
129 brought forward as follows:

130 67-1-37. The Department of Revenue, under its duties and
131 powers with respect to the Alcoholic Beverage Control Division
132 therein, shall have the following powers, functions and duties:

133 (a) To issue or refuse to issue any permit provided for
134 by this article, or to extend the permit or remit in whole or any
135 part of the permit monies when the permit cannot be used due to a
136 natural disaster or act of God.

137 (b) To revoke, suspend or cancel, for violation of or
138 noncompliance with the provisions of this article, or the law
139 governing the production and sale of native wines or native
140 spirits, or any lawful rules and regulations of the department
141 issued hereunder, or for other sufficient cause, any permit issued
142 by it under the provisions of this article. The department shall
143 also be authorized to suspend the permit of any permit holder for
144 being out of compliance with an order for support, as defined in
145 Section 93-11-153. The procedure for suspension of a permit for
146 being out of compliance with an order for support, and the
147 procedure for the reissuance or reinstatement of a permit
148 suspended for that purpose, and the payment of any fees for the
149 reissuance or reinstatement of a permit suspended for that
150 purpose, shall be governed by Section 93-11-157 or Section



151 93-11-163, as the case may be. If there is any conflict between
152 any provision of Section 93-11-157 or Section 93-11-163 and any
153 provision of this article, the provisions of Section 93-11-157 or
154 Section 93-11-163, as the case may be, shall control.

155 (c) To prescribe forms of permits and applications for
156 permits and of all reports which it deems necessary in
157 administering this article.

158 (d) To fix standards, not in conflict with those
159 prescribed by any law of this state or of the United States, to
160 secure the use of proper ingredients and methods of manufacture of
161 alcoholic beverages.

162 (e) To issue rules regulating the advertising of
163 alcoholic beverages in the state in any class of media and
164 permitting advertising of the retail price of alcoholic beverages.

165 (f) To issue reasonable rules and regulations, not
166 inconsistent with the federal laws or regulations, requiring
167 informative labeling of all alcoholic beverages offered for sale
168 within this state and providing for the standards of fill and
169 shapes of retail containers of alcoholic beverages; however, such
170 containers shall not contain less than fifty (50) milliliters by
171 liquid measure.

172 (g) Subject to the provisions of subsection (3) of
173 Section 67-1-51, to issue rules and regulations governing the
174 issuance of retail permits for premises located near or around
175 schools, colleges, universities, churches and other public



176 institutions, and specifying the distances therefrom within which
177 no such permit shall be issued. The Alcoholic Beverage Control
178 Division shall not issue a package retailer's or on-premises
179 retailer's permit for the sale or consumption of alcoholic
180 beverages in or on the campus of any public school, community or
181 junior college, college or university.

182 (h) To adopt and promulgate, repeal and amend, such
183 rules, regulations, standards, requirements and orders, not
184 inconsistent with this article or any law of this state or of the
185 United States, as it deems necessary to control the manufacture,
186 importation, transportation, distribution, delivery and sale of
187 alcoholic liquor, whether intended for beverage or nonbeverage use
188 in a manner not inconsistent with the provisions of this article
189 or any other statute, including the native wine and native spirit
190 laws.

191 (i) To call upon other administrative departments of
192 the state, county and municipal governments, county and city
193 police departments and upon prosecuting officers for such
194 information and assistance as it may deem necessary in the
195 performance of its duties.

196 (j) To prepare and submit to the Governor during the
197 month of January of each year a detailed report of its official
198 acts during the preceding fiscal year ending June 30, including
199 such recommendations as it may see fit to make, and to transmit a



200 like report to each member of the Legislature of this state upon
201 the convening thereof at its next regular session.

202 (k) To inspect, or cause to be inspected, any premises
203 where alcoholic liquors intended for sale are manufactured,
204 stored, distributed or sold, and to examine or cause to be
205 examined all books and records pertaining to the business
206 conducted therein.

207 (l) To investigate the administration of laws in
208 relation to alcoholic liquors in this and other states and any
209 foreign countries, and to recommend from time to time to the
210 Governor and through him to the Legislature of this state such
211 amendments to this article, if any, as it may think desirable.

212 (m) To designate hours and days when alcoholic
213 beverages may be sold in different localities in the state which
214 permit such sale.

215 (n) To assign employees to posts of duty at locations
216 where they will be most beneficial for the control of alcoholic
217 beverages and to take any other action concerning persons employed
218 under this article as authorized by law and taken in accordance
219 with the rules, regulations and procedures of the State Personnel
220 Board.

221 (o) To enforce the provisions made unlawful by Chapter
222 3, Title 67 and Section 97-5-49.



223 (p) To delegate its authority under this article to the
224 Alcoholic Beverage Control Division, its director or any other
225 officer or employee of the department that it deems appropriate.

226 (q) To prescribe and charge a fee to defray the costs
227 of shipping alcoholic beverages, provided that such fee is
228 determined in a manner provided by the department by rules and/or
229 regulations adopted in accordance with the Mississippi
230 Administrative Procedures Law.

231 **SECTION 9.** This act shall take effect and be in force from
232 and after July 1, 2023.

