

FIRST ANALYSIS

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BILL ANALYSIS

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Senate Fiscal Agency

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House Bill 4501 (as reported without amendment)

House Bill 4533 (Substitute H-5 as reported with amendment)

House Bill 4554 (Substitute H-1 as reported with amendment)

House Bill 4570 (as reported without amendment)

Sponsor: Representative Nate Jonker (H.B. 4501)

Representative Ken DeBeaussiaert (H.B. 4533 Substitute H-5)

Representative Dennis M. Dutko (H.B. 4554 Substitute H-1)

Representative Sharon Gire (H.B. 4570)

House Committee: Public Health

Senate Committee: Health Policy

Date Completed: 1-13-88

RATIONALE

More Americans have abused or misused prescription drugs, according to a report by the U.S. Comptroller General, than have used illegal drugs such as cocaine, hallucinogens, or heroin. The diversion of prescription drugs from legal channels to illegal and abusive distribution channels occurs through a variety of methods including the dispensing of drugs through pharmacies for illegitimate purposes. Michigan reportedly is a leader in the illegal diversion of drugs with much of the problem centering on forged prescriptions and pharmacy diversion, according to the Department of Licensing and Regulation. In an effort to combat the problem of forged and fraudulent prescriptions, the Senate this year passed Senate Bill 75, which would require the use of triplicate prescription forms for the dispensing of certain controlled substances. Some people believe that, in addition, regulations governing the State's 40,000 practitioners who are licensed to prescribe and dispense controlled substances should be strengthened as another move to battle the illegal diversion of drugs.

CONTENTHouse Bill 4501

The bill would amend the Public Health Code to require that when a written prescription for the dispensing of certain controlled substances was required, the written prescription would have to contain the quantity of the controlled substance prescribed in written and numerical terms. A written prescription would be in compliance if it contained, in addition to the quantity of the controlled substance prescribed in written terms, preprinted numbers, representative of the quantity of the prescribed controlled substance, next to which was a box or line that could be checked by the prescriber.

MCL 333.7333

House Bill 4533 (Substitute H-5)

The bill would amend the Public Health Code to require, beginning May 1, 1988, and annually thereafter, a person licensed under the Code to manufacture, distribute, prescribe, or dispense controlled substances, to inventory and report to the administrator (the Michigan Board of Pharmacy or its designated or established authority) all Schedule 2 to 5 controlled substances possessed by the

person at the time of the inventory. The annual report could be conducted and submitted not more than 30 days before May 1, but not later than 60 days after May 1. A person who knowingly violated this provision could be punished by a civil fine of up to \$25,000 in a circuit court proceeding.

MCL 333.7321

House Bill 4554 (Substitute H-1)

The bill would amend the Public Health Code to require a person who was licensed under the Code to distribute controlled substances to report quarterly to the administrator all Schedule 2 controlled substances and, as designated by the administrator, controlled substances that are sold to licensed practitioners and retail pharmacies. The administrator would be required to designate by rule the controlled substances in Schedules 3 to 5 to be reported.

The report would have to be in writing and would have to include the name of each licensed practitioner and retail pharmacy to whom the controlled substance was distributed. The report could be transmitted electronically, if the transmission ultimately were reduced to writing.

The bill would take effect six months after being enacted.

MCL 333.7303

House Bill 4570

The bill would amend the Public Health Code to allow only a practitioner who was licensed to prescribe or dispense controlled substances to purchase from a licensed manufacturer or distributor a Schedule 1 or 2 controlled substance. This authority to purchase a Schedule 1 or 2 controlled substance would not be assignable or transferable. A purchase of a Schedule 1 or 2 controlled substance could be made only on an order form that complied with Federal law.

The bill would delete the current provision under which a Schedule 1 or 2 controlled substance can be distributed by a licensee to another licensee providing that an order form that complies with Federal law is used.

The bill would take effect six months after it was enacted.
(The Code currently defines a practitioner as a prescriber

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or pharmacist, scientific investigator, pharmacy, or hospital.)

MCL 333.7331

SENATE COMMITTEE ACTION

The Senate Health Policy Committee adopted an amendment to House Bill 4533 (H-5) to specify that a person who "knowingly violated" the bill's provisions could be punished by a specific civil fine in circuit court. The House-passed version of the bill stated that "violators" could be punished by a specific civil fine in a circuit court proceeding. The Committee also adopted an amendment to House Bill 4554 (H-1) to require that a person who was licensed under the Public Health Code to distribute controlled substances report quarterly to the Michigan Board of Pharmacy or its designated authority on certain controlled substances sold to licensed practitioners and retail pharmacies. The House-passed version had required the report to be made monthly.

FISCAL IMPACT

House Bill 4501

The bill would have no fiscal impact on State or local government.

House Bill 4533 (Substitute H-5)

The bill would result in an indeterminate increase in administrative costs associated with processing the annual reports. These costs would be offset by any fine revenues received as a result of a violation of the provisions of the bill.

House Bill 4554 (Substitute H-1)

The bill would result in an indeterminate increase in administrative costs associated with processing the quarterly reports.

House Bill 4570

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

In 1983, Michigan ranked first among the 50 states in the per capita consumption of commonly abused prescription drugs, according to data from the U. S. Drug Enforcement Agency (DEA). After two years of special enforcement activity and revised rules, the consumption in Michigan of certain Schedule 2 drugs, such as methamphetamine (Dexosyn) and phenmetrazine (Preludin) dropped considerably, but consumption of other Schedule 2 drugs remains high. While Schedule 2 drugs, such as narcotic analgesics and amphetamines, have legitimate purposes, they are highly habit forming and have a high potential for abuse and dependence. Michigan still is a leader in the diversion of these drugs and other controlled substances. Regulations governing those persons licensed to dispense these controlled substances is an important step that must be taken to stop the illegal diversion of drugs.

Supporting Argument

One way individuals obtain excess quantities of prescription drugs, which will then be diverted illegally, is by changing the quantities prescribed on legitimate prescription forms. For example, it is relatively easy to

change a prescription for 30 capsules or tablets into a prescription for 80 capsules or tablets simply by altering the "3" so that it would look like an "8". House Bill 4501 would make this type of prescription forgery more difficult and, therefore, less likely, by requiring that drug quantities be indicated on prescription forms in both numerical and written terms, much as checks now are written.

Supporting Argument

Excess quantities of prescription drugs can find their way into the illicit market through unscrupulous distributors. Under current Federal law, a person who is not licensed can be designated through power of attorney to order controlled substances using Federal forms issued by the U.S. Drug Enforcement Agency. This current practice increases the potential for illegal drug diversion tactics to occur. For example, an unlicensed person could order drugs, under the guise that these drugs were for legitimate sale at a pharmacy, while all along intending to sell them illegally for personal gain. If an unlicensed person is suspected of diverting drugs from a pharmacy for illegal sale, it may be difficult to obtain criminal proof for prosecution, and there are no civil or administrative remedies available, except for closing the pharmacy. Even if an unlicensed pharmacy owner is caught buying prescription drugs for illegal diversion, he or she could close down one pharmacy and reopen under a new name to continue diverting drugs. House Bill 4570 would close this loophole by requiring people who buy Schedule 1 or 2 drugs for prescription or sale to have a State practitioner license. This would give the State the ability to take sanctions against a person's license, and could act as a deterrent since the person could lose his or her license if caught diverting drugs, making it more difficult to get back into the business.

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