

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 182 (as introduced 1-28-99)  
Sponsor: Senator Bev Hammerstrom  
Committee: Judiciary

Date Completed: 5-11-99

## **CONTENT**

**The bill would amend the Public Health Code to prohibit the possession of two, rather than 10, grams of ephedrine; extend the prohibition to salts and isomers of ephedrine; revise the exceptions to the prohibition; and regulate the distribution of products containing ephedrine.**

### **Possession**

Currently, the Code prohibits a person from possessing more than 10 grams of ephedrine, alone or in a mixture, and provides that a violation is a felony punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. The bill, instead, would prohibit possession of more than two grams of ephedrine, a salt of ephedrine, an isomer of ephedrine, or a salt of an isomer of ephedrine, alone or in combination, or a substance or mixture containing ephedrine, a salt of ephedrine, an isomer of ephedrine, or a salt of an isomer of ephedrine. The bill would retain the current penalty for possession.

The prohibition currently does not apply to any of the following:

- A person who possesses ephedrine pursuant to a State or Federal license to manufacture, deliver, dispense, possess with intent to manufacture or deliver, or possess a controlled substance, prescription drug, or other drug.
- A person who possesses ephedrine for retail sale pursuant to a license issued under the General Sales Tax Act.
- A person who possesses ephedrine in the course of his or her business of selling or transporting ephedrine to a person described in either of the preceding provisions.
- A person who possesses ephedrine pursuant to a prescription.

The bill, instead, would exempt the following from the prohibition:

- A person who was licensed, registered, or otherwise permitted by Michigan or the United States to manufacture, distribute, prescribe, dispense, administer, or conduct research with a controlled substance, prescription drug, or other drug and who possessed ephedrine or a salt, isomer, or a salt of an isomer of ephedrine in connection with that license, registration, or permission.
- A person who possessed ephedrine or a salt, isomer, or a salt of an isomer of ephedrine pursuant to a prescription or a retail sale permitted under the bill.
- A person who possessed ephedrine or a salt, isomer, or salt of an isomer of ephedrine in the course of his or her business of selling or transporting ephedrine to a person described in either of the preceding provisions.
- A person who possessed ephedrine, or a salt, isomer, or salt of an isomer of ephedrine for sale at retail subject to the sales tax, and who was in compliance with the bill's delivery requirements.

### **Delivery of Ephedrine**

The bill specifies that a person could not deliver a product that contained ephedrine, a salt of ephedrine, an

isomer of ephedrine, or a salt of an isomer of ephedrine, except pursuant to a prescription or as a dispensing prescriber or veterinarian acting in the scope of that person's practice. A violation would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

The bill's delivery provision would not apply to the sale by a manufacturer, wholesale distributor, or retailer of a product if the product could lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act and if the Michigan Board of Pharmacy determined, after notice and a hearing, that the product was both of the following:

- Labeled and marketed in a manner consistent with the applicable Food and Drug Administration (FDA) rules and guidelines concerning over-the-counter products.
- Manufactured and distributed for legitimate medical use in a manner that reduced or eliminated the likelihood of abuse.

The delivery provision also would not apply to either of the following:

- The sale by a manufacturer, wholesale distributor, or retailer of one or more of the following products: breathe-aid; broncare; bronchial congestion; bronkaid tablets; bronkaid dual action caplets; bronkotabs; bronkolixir; neorespin; pazo hemorrhoid ointment or suppositories; primatene tablets; primatene "dual action" formula; quelidrine; resp; or vatronal nose drops.
- Delivery to a person licensed, registered, or otherwise permitted by Michigan or the United States to manufacture, distribute, prescribe, dispense, administer, or conduct research with a controlled substance, prescription drug, or other drug, in connection with that license, registration, or permission.

The pharmacy board could remove the exemption of a product exempted under or listed under the bill, if the board determined after notice and a hearing that the product did not meet the criteria of the bill's exemption for over-the-counter delivery (i.e., labeling and marketing consistent with FDA rules and guidelines, and manufacture and distribution for legitimate medical use in a manner that reduced the likelihood of abuse). In determining whether to exempt a product, the pharmacy board would have to consider all of the following:

- The manner of packaging the product, including the package size.
- The product's name and labeling.
- The manner of distributing, advertising, and promoting the product.
- The duration, scope, and significance of abuse of the product.
- The need to provide medically important therapies containing ephedrine, its salts or isomers, or salts of its isomers to the public on an over-the-counter basis for indications approved by the FDA.
- Other factors or considerations the board determined were relevant to and consistent with public health and safety.

At least once a year, the board would have to publish a list of products exempted under the bill or for which the board had removed an exemption.

MCL 333.17766c et al.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

Senate Bill 182 would have an indeterminate fiscal impact on State and local government for the costs of incarceration. In 1997, there were no convictions for possession of ephedrine in violation of Section 17766(c) of the Public Health Code. There are no data available to indicate how many people would be convicted of violating Section 17766(c) with the changes in Senate Bill 182, nor are there data to indicate how many people could be convicted of violating Section 17766(d), delivery of ephedrine, a new crime contained in the bill.

This bill could have a fiscal impact on the Department of Consumer and Industry Services as the Board of Pharmacy would be required to compile and publish a list of exempted products. These additional responsibilities could increase costs to the Department but probably would be covered under the existing appropriation.

Fiscal Analyst: K. Firestone

S9900\sb182sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.