

EPHEDRINE/PSEUDOEPHEDRINE ACCESS

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Senate Bill 189

Sponsor: Sen. Patricia L. Birkholz

House Committee: Judiciary

Senate Committee: Health Policy

Complete to 5-23-05

A SUMMARY OF SENATE BILL 189 AS PASSED BY THE SENATE 5-12-05

The bill would amend the Public Health Code to restrict the sale of products containing ephedrine or pseudoephedrine by doing the following:

- Require a retail seller of ephedrine or pseudoephedrine products to maintain them behind a counter, within a locked case, or where the attendant could monitor them, or use an antitheft device on the products along with constant video surveillance.
- Provide that a retail seller would have to require photo identification for the purchase of an ephedrine or pseudoephedrine product.
- Require a seller that did not maintain the products behind a counter or within a locked case to record product purchases, maintain the log for at least six months, and make it available to a law enforcement agency upon request.
- Prohibit a person from selling an ephedrine or pseudoephedrine product to a person under 18 years old.
- Require the Department of Community Health to produce signs indicating that the sale of ephedrine and pseudoephedrine products to a minor was prohibited by law, and require retailers to post the signs near the point of sale.
- Limit the amount of an ephedrine or pseudoephedrine product that could be sold in a single over-the-counter sale.
- Provide that a person who violated the bill's provisions would be responsible for a state civil infraction and could be ordered to pay a maximum civil fine of \$50 per violation.
- Require the Department of State Police to report to the legislature one year after the effective date of the bill regarding its impact and effectiveness.
- Prohibit a local unit of government from imposing any new requirement or prohibition regarding the sale of an ephedrine or pseudoephedrine product beginning on the bill's effective date.

The bill would take effect six months after it was enacted. It is described below in further detail.

Product Maintenance. Except as otherwise provided in the bill, a person who possessed ephedrine or pseudoephedrine for retail sale pursuant to a sales tax license, would have to maintain all products that contained any compound, mixture, or preparation containing

any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt or an optical isomer of ephedrine or pseudoephedrine, behind a counter where the public was not permitted, within a locked case so that a customer wanting to gain access to the product would have to ask a store employee for assistance, or within 20 feet of a counter that allowed the attendant to view the products in an unobstructed manner, or use an antitheft device with special package tags and detection alarms designed to prevent theft, along with constant video surveillance as follows:

- The video camera would have to be positioned so that individuals examining or removing those products would be visible.
- The camera would have to be programmed to record at least a one-second image at least every 10 seconds.
- The images would have to be maintained for at least six months and made available to any law enforcement agency upon request.
- The retailer prominently would have to display a sign indicating that the area was under constant video surveillance in a location that was conspicuous and clearly visible to the public.

If the retailer maintained the products within 20 feet of a counter and the counter was not staffed by at least one employee at all times, the retail distributor would have to use antitheft devices and video surveillance when the counter was not staffed.

A person who sold an ephedrine or pseudoephedrine product also would have to require the purchaser to produce a valid photo identification that included the purchaser's name and date of birth. The seller would have to maintain a log or some type of record detailing the sale, including the date of the sale, the buyer's name and date of birth, and a description of the product and the amount purchased. The seller would have to maintain the log for at least six months and make it available only to a law enforcement agency upon request. The log or other means of recording the sale would not be a public record or subject to the Freedom of Information Act. A person could not sell or provide a copy of the log to another person for the purpose of surveys, marketing, or solicitations. A seller that maintained the products behind the counter or within a locked case would not have to maintain a log or other type of record.

Sales restrictions. Under the bill, a person could not knowingly sell any ephedrine or pseudoephedrine product to an individual under 18 years old. A person could not knowingly sell more than two packages or 48 tablets or capsules, or more than two personal convenience packages containing two tablets or capsules each, of any ephedrine or pseudoephedrine product to any individual in a single OTC sale.

Exceptions. The bill would not apply to any of the following:

- A pediatric product primarily intended for administration to children under the age of 12, according to label instructions.

- A product containing pseudoephedrine in a liquid form, if pseudoephedrine were not the only active ingredient.
- A product that the state Board of Pharmacy exempted, upon a manufacturer's application or certification by the U.S. Drug Enforcement Administration, because the product had been formulated in a way that effectively prevented the conversion of the active ingredient into methamphetamine.
- A product that was dispensed pursuant to a prescription.

Signs. A seller would have to post, in a place close to the point of sale and conspicuous to employees and customers, a sign produced by the DCH that included the following statement: "The sale of any product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine to a minor under 18 years of age is prohibited by law."

If the sign were more than six feet from the point of sale, it would have to be 5 1/2 inches by 8 1/2 inches and the required statement would have to be printed in 36-point boldface type. If the sign were six feet or less from the point of sale, it would have to be two inches by four inches and the statement would have to be printed in 20-point boldfaced type.

The DCH would have to produce the sign and make copies available for distribution to licensed retailers free of charge on the bill's effective date. Licensed retailers would have to obtain copies from the department and distribute them free of charge, upon request, to persons who were subject to the sign requirement.

Penalty and Defense. A person who violated the bill would be responsible for a state civil infraction and could be ordered to pay a maximum civil fine of \$50 for each violation. It would be an affirmative defense to a charge of knowingly selling an ephedrine or pseudoephedrine product to a person under 18 that the defendant had in force at the time of the citation, and continued to have in force, a written policy for employees to prevent such sales, and that the defendant continued to enforce the policy. A defendant who proposed to offer evidence of this affirmative defense would have to file and serve notice of the defense, in writing, upon the court and prosecuting attorney. The notice would have to be served at least 14 days before the hearing date. A prosecuting attorney who proposed to offer testimony to rebut this affirmative defense would have to file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice would have to be served at least seven days before the hearing and contain the name and address of each rebuttal witness.

State police report. One year after the bill took effect, the Department of State Police would have to submit a written report to the legislature regarding the bill's impact and effectiveness, including the number of clandestine methamphetamine lab incidents before and after the legislation was enacted.

Local regulation. Beginning on the bill's effective date, a city, township, village, county, other local unit of government, or political subdivision of the state could not impose any new requirement or prohibition pertaining to the sale of an ephedrine or pseudoephedrine product. The bill specifies that this provision would not invalidate or otherwise restrict a requirement or prohibition in place on the bill's effective date.

MCL 333.17766b

FISCAL IMPACT:

The creation and printing of required signs would impose costs on the Department of Community Health. Civil infraction sign revenue would benefit public libraries.

Legislative Analyst: Susan Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.