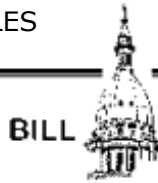




Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4322 (Substitute H-1 as passed by the House)
Sponsor: Representative Rick Jones
House Committee: Judiciary
Senate Committee: Health Policy

Date Completed: 6-20-05

CONTENT

The bill would amend the Public Health Code to do the following:

- **Prohibit a person from knowingly selling an ephedrine or pseudoephedrine product to a person under 18 years old.**
- **Limit the amount of an ephedrine or pseudoephedrine product that could be sold in a single over-the-counter (OTC) sale.**
- **Provide that 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 per violation.**
- **Require the Department of Community Health (DCH) 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.**
- **Prohibit a local unit of government from imposing any new requirement or prohibition that conflicted with the bill.**

The bill is tie-barred to Senate Bill 189. Senate Bill 189 (H-1), as passed by the House, is tie-barred to the House bill and would amend the Public Health Code to do 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.
- Provide that a person who violated the Senate bill 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 by December 15, 2006, regarding the effectiveness of Senate Bill 189 and House Bill 4322.

House Bill 4322 (H-1) is described below in further detail.

Sales Restrictions

Under the bill, a person who possessed 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 of an optical isomer of ephedrine or pseudoephedrine, for retail sale pursuant to a sales tax license could not knowingly sell any ephedrine or pseudoephedrine product to an individual under 18 years old. The bill also

would prohibit a person from knowingly selling 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

The bill would require a seller 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. In order to purchase a product described above, you must provide the retailer with an official Michigan operator's or chauffeur's license, and official Michigan personal identification card, or any other bona fide picture identification which establishes the identify and age of the individual. The retailer may require you to sign a log or other type of record detailing the sale of that product. State law further prohibits in a single over-the-counter transaction the sale of more than 2 packages, or 48 tablets or capsules, of any product described above."

If the sign were more than six feet from the point of sale, it would have to be 5-½ inches by 8-½ 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, beginning November 1, 2005, make the sign available to licensed retailers on the Department's website free of charge. Licensed retailers would have to obtain the sign from the website and provide copies free of charge, upon request, to people who were subject to the sign requirement.

Penalty & 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 enforced and 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.

Local Regulation

Beginning on December 15, 2005, notwithstanding any other provision of law, 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 that was contrary to, or in any way conflicting with, the bill's provisions. The bill specifies that this provision would not invalidate or otherwise restrict a requirement or prohibition in place on December 15, 2005.

Effective Date

All of the bill's provisions, except the sign requirements, would take effect on December 15, 2005.

Proposed MCL 333.17766f

Legislative Analyst: Julie Koval

FISCAL IMPACT

There are no data to indicate how many people would be found responsible for a civil infraction for violating the proposed section. Additional civil fine revenue would benefit public libraries.

Fiscal Analyst: David Fosdick
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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.