

Legislative Analysis



EPHEDRINE/PSEUDOEPHEDRINE SALES

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Senate Bill 333 (Substitute H-1)

Sponsor: Sen. John Proos

Senate Bill 350 as passed by the Senate

Sponsor: Sen. Mike Nofs

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (6-28-11)

BRIEF SUMMARY: Senate Bill 333 would require electronic tracking of sales of products containing ephedrine and pseudoephedrine. Senate Bill 350 would prohibit the use of a fake ID to purchase products containing ephedrine or pseudoephedrine.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local government. Data is not available to determine how many persons will be convicted of the new misdemeanor offenses under the bills. To the extent that the bills result in new misdemeanor convictions, they could increase local incarceration and/or misdemeanor probation costs, which vary by county. Any increase in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Several years ago, legislation was adopted to limit the amount of cold products containing ephedrine and pseudoephedrine that a person can buy in a single day or month, require retailers to keep the products in certain supervised locations in the store, and require the use of video cameras and log books in which certain information concerning the purchaser is recorded. In 2006, the federal Combat Methamphetamine Act required retailers to prohibit direct access to those products by customers and to maintain a written or electronic log of sales; the act also restricted the amount of ephedrine and pseudoephedrine that a person could purchase in a 24-hour or 30-day period to 3.6 grams and 9 grams, respectively.

Even with state and federal laws clamping down on illicit purchases of products containing ephedrine and pseudoephedrine (used in the manufacture of methamphetamine), meth production and use continues to escalate at an alarming rate. Current tracking methods of purchases fail to warn law enforcement of patterns associated with the meth trade in time to apprehend a suspect before the products are used to make meth and the restrictions regarding the amount a person can legitimately purchase differs between the state and federal laws.

Recently, an electronic tracking system has been developed that provides law enforcement agencies with real-time data regarding over-the-counter (OTC) sales of products containing ephedrine and pseudoephedrine and that blocks sales of the products. Already, the NPLeX system is stopping sales of thousands of packages of OTC products that could have been used to further the illegal meth trade. It has been suggested that Michigan law be changed to require retailers to use NPLeX instead of the current methods required by state law to track OTC sales of these products and to change the amount of ephedrine and pseudoephedrine that may be lawfully purchased by an individual to match those specified in federal law.

In addition, some feel that since purchase of OTC products containing ephedrine and pseudoephedrine is restricted to individuals at least 18 years of age, that there should be a penalty for anyone using or attempting to use a fake ID to make the purchase.

THE CONTENT OF THE BILLS:

Senate Bill 333 would add Section 7340a to the Public Health Code (MCL 333.7340a) to do the following:

- Beginning January 1, 2012, require a retailer – before completing a sale under Section 17766f of the code – to electronically submit the required information to the National Precursor Log Exchange (NPLeX) administered by the National Association of Drug Diversion Investigators (NADDI) at no cost for using the NPLeX system.

(Section 17766f would be amended by House Bill 4749 to, among other things, limit the sale of ephedrine and pseudoephedrine to no more than 3.6 grams per individual per day or more than 9 grams per individual for any 30-day period.)

- If unable to comply because of mechanical or electronic failure of the tracking system, require the retailer to maintain a written log or alternative electronic recordkeeping mechanism until compliance is possible.
- Require NADDI to provide real-time access to NPLeX information to state law enforcement as authorized by state and federal law.
- Require the electronic tracking system to be capable of generating a "stop sale" alert notifying the retailer that completion of the sale would violate House Bill 4564. The retailer would be prohibited from completing the sale. An override function would have to be included in the system that could be used in the event the dispenser had a reasonable fear of imminent bodily harm if the sale was not completed. The system would have to log each instance in which the override function was utilized.
- Create immunity from civil liability for any damages arising out of the failure to comply with the record-keeping or sales verification requirements and specify that noncompliance would not create a civil cause of action for damages to any other person arising out of that failure – absent a direct and proximate cause.

- Specify a violation is a misdemeanor punishable by a fine of not more than \$500.
- Tie-bar the bill to House Bill 4749.

Senate Bill 350 would amend the Public Health Code (MCL 333.17766e) to make it a criminal offense to use or attempt to use a false identification to purchase a product containing any compound, mixture, or preparations containing any detectable quantity of ephedrine or pseudoephedrine or a salt or isomer of either. A violation would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more \$100.

The bill would not apply to individuals involved in sting operations under conditions specified in the bill.

HOUSE COMMITTEE ACTION:

The committee adopted an H-1 Substitute to tie-bar the bill to House Bill 4749 instead of House Bill 4564 and reference sales completed under provisions of House Bill 4749.

BACKGROUND INFORMATION:

NPLEx. According to information supplied by the Senate Fiscal Agency in its analysis of Senate Bills 333 and 350 dated 5-11-11, the National Precursor Log Exchange is a real-time electronic logging system used by pharmacies and law enforcement to track sales of OTC cold and allergy medications containing ephedrine and pseudoephedrine. The system is sponsored by the makers of such medications and provided to law enforcement agencies and state governments free of charge by the National Association of Drug Diversion Investigators. The system blocks sales that would exceed legal limits and provides law enforcement with immediate access to transaction information when necessary.

How much is 3.6 grams of pseudoephedrine? According to Appriss, Inc., 3.6 grams is the amount found in:

- One 15-count box of a 24-hour allergy medicine (15 pills x 240 mg per pill = 3.6 grams);
- Three 10-count boxes of a 12-hour cold medicine (30x 120 mg = 3.6 grams); or,
- Six 20-count boxes of a four-six hour cold medicine (120 x 30 mg = 3.6 grams).

ARGUMENTS:

For:

According to testimony offered by the manufacturer of the technology behind NPLEx, there is no cost to retailers or consumers for a retailer to install an NPLEx system in a pharmacy, convenience store, or grocery store. When an individual purchases a product containing ephedrine or pseudoephedrine and the required information is collected, the system will alert the clerk and law enforcement if that individual has already reached the lawful limit in a 24-hour or 30-day period. Since the data is in one database, it provides

for seamless interstate communication and inter-retailer communication – even across town, across the state, or across the nation. Thus, a person would not be able to purchase enough products by driving to multiple retail outlets or across state lines to make a batch of meth. Since only law enforcement officers can see the data collected by NPLeX, there are no confidentiality issues facing legitimate users of OTC cold or allergy medications.

Reportedly, the states already requiring use of NPLeX have seen drastic reductions in the number of meth operations operating in their jurisdictions. However, as more and more states are adopting legislation requiring NPLeX, the illegal meth operations are moving to states that do not use NPLeX. Since Indiana has recently passed legislation to require the use of NPLeX and other border states are considering doing the same, it is imperative that Michigan also enact legislation requiring the use of NPLeX to avoid becoming a safe haven for meth manufacturers and users.

Against:

A concern was raised regarding the inability of rural retailers or small "mom and pop" stores to access NPLeX due to the cost of computer equipment or due to connectivity problems for businesses located in areas without Internet access.

Response:

It is true that there are some connectivity issues, especially in rural areas. However, the bill does allow a retailer who is unable to comply with Senate Bill 333's requirements due to mechanical or electronic failure to maintain a written log or alternative electronic recordkeeping mechanism until compliance is possible. Meanwhile, the "wiring" of the entire state for Internet access continues at a rapid pace and hopefully it won't be long until every retailer can access the NPLeX system with the same ease. However, there are too many benefits to having NPLeX up and running in as many retail outlets as possible to wait for all the connectivity issues to be resolved.

For:

Senate Bill 350 would create a misdemeanor penalty for using a fake ID to purchase a product containing ephedrine or pseudoephedrine. This is needed to prevent teens from attempting to make meth and also to prevent adults from trying to skirt restrictions on individual purchases by using underage accomplices.

POSITIONS:

A representative of the Consumer Healthcare Products Association testified in support of Senate Bill 333. (6-9-11)

A representative of Appriss testified in support of Senate Bill 333. (6-9-11)

A representative of the Davis County Sheriff's Office (Kentucky) testified in support of Senate Bill 333. (6-9-11)

The Prosecuting Attorneys Association of Michigan supports both bills. (6-7-11)

The Michigan Pharmacists Association supports both bills. (6-9-11)

The Michigan State Medical Society supports both bills. (6-9-11)

The Michigan Osteopathic Association supports both bills. (6-9-11)

CVS Caremark supports both bills. (6-9-11)

The Michigan Grocers Association supports Senate Bill 333. (5-3-11)

The Fraternal Order of Police supports Senate Bill 333. (4-29-11)

The Michigan Retailers Association supports Senate Bill 333. (6-9-11)

The Michigan Academy of Family Physicians indicated support for Senate Bill 333. (6-9-11)

The National Federation of Independent Business (NFIB) indicated support for Senate Bill 333. (6-9-11)

The Michigan Association of Health Plans indicated support for Senate Bill 333. (6-15-11)

Johnson & Johnson indicated support for Senate Bill 333. (6-9-11)

The National Association of Chain Drug Stores indicated support for Senate Bill 333. (6-15-11)

Sanofi indicated support for Senate Bill 333. (6-15-11)

The Police Officers Association of Michigan indicated support for Senate Bill 333. (6-9-11)

The Southwest Michigan Tea Party Patriots indicated support for Senate Bill 333. (6-9-11)

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■ 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.