



Senate Fiscal Agency  
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## BILL ANALYSIS

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Senate Bill 333 (as reported by the Committee of the Whole)  
Senate Bill 350 (as reported without amendment)  
Sponsor: Senator John Proos (S.B. 333)  
Senator Mike Nofs (S.B. 350)  
Committee: Health Policy

Date Completed: 5-11-11

**RATIONALE**

The use and production of methamphetamine ("meth") have been a growing problem in the State—particularly in southwestern Michigan—since the 1990s. Methamphetamine is manufactured with common chemicals and household items in clandestine laboratories. Although there are several production methods, meth labs discovered in Michigan typically have used a manufacturing process that involves the extraction of pseudoephedrine or ephedrine (precursor ingredients) from cold tablets, according to the Office of Drug Control Policy in the Michigan Department of Community Health.

Legislation enacted in recent years has taken various approaches to combat the use and production of meth. The legislation includes measures to restrict over-the-counter (OTC) sales of products containing ephedrine and pseudoephedrine to people at least 18 years old, require retailers to monitor the products and keep records of purchases, and prohibit internet and mail-order sales of ephedrine and pseudoephedrine products. In addition, the Federal Combat Methamphetamine Act, which took effect in 2006, requires retailers to prohibit direct access by customers and maintain a written or electronic log of sales, including the name and address of purchasers and the date and quantity of the sale; and limits the amount of ephedrine and pseudoephedrine that a person may purchase in 24-hour and 30-day periods.

To enhance the State's efforts to limit access of the precursor ingredients of meth, it has been suggested that retailers should be required to submit information about OTC ephedrine and pseudoephedrine product sales to the National Precursor Log Exchange (NPLEx), an electronic tracking system that provides real-time data to law enforcement. (The Exchange is described below, under **BACKGROUND**.) In addition, it has been suggested that a misdemeanor penalty should be established for using a false ID to purchase a product containing ephedrine or pseudoephedrine.

**CONTENT**

**Senate Bill 333 would amend the Public Health Code to do the following:**

- **Beginning January 1, 2012, require a retailer to submit electronically to the National Precursor Log Exchange information regarding sales of nonprescription products containing ephedrine or pseudoephedrine.**
- **Require an electronic sales tracking system to generate a stop sale alert if a transaction exceeded proposed restrictions on the amount of ephedrine or pseudoephedrine allowed in a sale to one purchaser.**
- **Provide immunity from civil liability for a person who failed to comply with record-keeping or sales verification requirements.**

-- **Designate a violation of the bill a misdemeanor and prescribe a maximum \$500 fine.**

**Senate Bill 350 would amend the Public Health Code to make it a misdemeanor to use a false identification to purchase a product containing ephedrine or pseudoephedrine. The offense would be punishable by imprisonment for up to 93 days and/or a maximum fine of \$100.**

Senate Bill 333 is tie-barred to House Bill 4564, which would amend the Code to limit the amount of ephedrine or pseudoephedrine a person could buy in a 24-hour period (as described below) and require retailers to require photo ID and record certain information about purchasers.

### **Senate Bill 333**

Beginning January 1, 2012, before completing a sale under proposed Section 7340a (which House Bill 4564 would add), a retailer would have to submit electronically the required information to NPLeX administered by the National Association of Drug Diversion Investigators (NADDI).

(House Bill 4564 would enact Section 7340a to prohibit the retail sale and purchase of products containing a total of more than 3.6 grams of ephedrine or pseudoephedrine, or a salt or isomer of ephedrine or pseudoephedrine, within a 24-hour period. The bill also would prohibit the retail sale and purchase of more than nine grams of products containing ephedrine or pseudoephedrine, or a salt or isomer of either substance, within a 24-hour period.)

If a retailer experienced mechanical or electronic failure of the electronic sales tracking system and were unable to comply with the tracking requirement, the retailer would have to maintain a written log or an alternative electronic record-keeping mechanism until the retailer could comply with the electronic tracking requirement.

The bill would require NADDI to provide real-time access to NPLeX information through the NPLeX online portal to law enforcement in Michigan as authorized by State and Federal law.

The electronic tracking system would have to be capable of generating a stop sale alert notifying the retailer that completion of the sale would result in the seller's or purchaser's violating the quantity limits prescribed by Section 7340a. The seller could not complete the sale if the system generated an alert. The system would have to contain an override function that a dispenser of ephedrine or pseudoephedrine could use if he or she had a reasonable fear of imminent bodily harm if he or she did not complete the sale. The system would have to log each instance in which the override function was used.

A person's failure to comply with the record-keeping or sales verification requirements would not create a civil cause of action for damages to any other person arising out of that failure, and the person would be immune from civil liability for any damages.

A person who violated the bill would be guilty of a misdemeanor punishable by a maximum fine of \$500.

### **Senate Bill 350**

Under the Code, a person who sells a 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, must require a purchaser to produce a valid photo identification that includes the individual's name and date of birth. Additionally, if the retailer does not maintain the products behind a counter or in a locked case, the retailer must maintain a log or record detailing the sale of the product, including the date of sale, the buyer's name and birthdate, and the amount and description of the product sold. The retailer must maintain the log for at least six months and make it available to a law enforcement agency upon request.

Under the bill, if a person used or attempted to use a false identification or another person's identification to purchase a product that contained any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, the person would be guilty of a misdemeanor punishable by imprisonment

for not more than 93 days and/or a fine of up to \$100.

The penalty would not apply to a person who participated in an undercover operation in which the individual purchased or received the product under direction of his or her employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

The penalty also would not apply to a person who participated in an undercover operation in which the individual purchased or received the product under the direction of the Michigan State Police (MSP) or a local law enforcement agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the product was not under the direction of the MSP or a local law enforcement agency and was not part of the undercover operation.

MCL 333.7340b (S.B. 333)  
333.17766e (S.B. 350)

## **BACKGROUND**

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.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The use of an integrated, real-time electronic tracking system such as NPLeX would increase the effectiveness of measures enacted previously to restrict access to precursor ingredients and curb the manufacture of meth. Limits on ephedrine and pseudoephedrine purchases, as well as the requirements for photo ID and sales

logging, have not been as useful as they could be for several reasons. First, as purchases of medication containing precursor ingredients have been limited, meth cookers have modified their production methods by making smaller, "one-pot" batches in a matter of a few hours. Thus, they are able to continue making the drug without violating laws related to the sale of precursor ingredients.

Furthermore, while Michigan and Federal laws require individual retailers to maintain logs of precursor ingredient purchases, the logs frequently are written, not electronic, and there is no way to identify buyers who might be going from store to store or state to state to purchase products in excess of the prescribed limits. The National Precursor Law Exchange, however, provides seamless communication between states and between retailers. The system notifies a retailer when a person attempts to buy more than he or she is allowed by law, regardless of where previous transactions occurred, and provides data immediately to help law enforcement identify people who might be buying ephedrine and pseudoephedrine products for improper use.

Some other measures enacted by states to prevent the manufacture and abuse of meth have fallen short. For example, Oregon and Mississippi have designated ephedrine and pseudoephedrine products as controlled substances requiring a prescription. While well-intentioned, this approach has been ineffective because meth makers simply buy the products in bordering states, while those with colds or allergies experience undue inconvenience in trying to alleviate their symptoms. Furthermore, prescription information is protected by health privacy laws, and the systems used to track prescriptions reportedly are updated approximately weekly--not quickly enough to aid law enforcement. The NPLeX system blocks illegal purchases and provides real-time data to law enforcement without requiring people who have a legitimate need for these products to obtain a prescription.

Another benefit of using NPLeX is that it would be less costly and time-consuming to retailers and law enforcement than written sales logs. This electronic system is funded entirely by pharmaceutical manufacturers; there would be no added cost to the State, retailers, or law enforcement agencies.

Furthermore, the information would be more secure if stored in NPLEx than it is in a written log on a pharmacy counter.

Overall, adoption of the NPLEx system in Michigan under Senate Bill 333 would be a proactive step in the fight against meth. Blocking access to precursor ingredients at the point of sale is essential in preventing the manufacture and abuse of this drug, and NPLEx would facilitate this without further burdening people with a justifiable need for ephedrine or pseudoephedrine products.

### **Supporting Argument**

A precursor ingredient tracking log, whether written or electronic, is effective only to the extent that the information contained in it is accurate. Since the sales log requirement went into effect, some meth cookers reportedly have used false IDs, or IDs belonging to other people, to circumvent the sales limits on OTC precursor products and evade detection by law enforcement. Making this action a misdemeanor, as proposed by Senate Bill 350, could deter some meth makers and provide another tool for the law enforcement community.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed misdemeanors. Local governments would incur the costs of incarceration in local facilities and/or misdemeanor probation, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.