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BILL ANALYSIS



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Senate Bill 333 (as introduced 4-14-11)
Sponsor: Senator John Proos
Committee: Health Policy

Date Completed: 5-3-11

CONTENT

The bill 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 (NPLEx) information regarding sales of nonprescription products containing ephedrine or pseudoephedrine.**
- **Provide immunity from liability for a retailer using the electronic sales tracking system properly.**
- **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.**
- **Designate a violation of the bill a misdemeanor and prescribe a maximum \$500 fine.**

Specifically, beginning January 1, 2012, before completing a sale under proposed Section 7340a (which House Bill 4564 would add, as described below), 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.

Proposed Section 7340a also contains requirements for retailers to require photo ID and record certain information about purchasers.)

Under Senate Bill 333, absent negligence, wantonness, recklessness, or deliberate misconduct, any retailer using the electronic sales tracking system would not be civilly liable as a result of any act or omission in carrying out the duties prescribed by the bill, and would be immune from liability to any third party unless the retailer had violated the bill's requirements in relation to a claim brought for that violation.

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

The bill is tie-barred to House Bill 4564.

Proposed MCL 333.7340b

BACKGROUND

In recent years, the Federal government and a number of states have enacted legislation to restrict access to ephedrine and pseudoephedrine, substances that can be extracted from cold and allergy tablets for use in manufacturing methamphetamine ("meth"). In Michigan, the measures include limits on sales of over-the-counter (OTC) products containing these precursor ingredients, a requirement that a purchaser show photo identification to buy such products, and a requirement that retailers monitor the products or keep records of purchases.

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.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill 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 misdemeanor. 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.