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House Bills 4749 and 4750 (as passed by the House)
Sponsor: Representative Amanda Price
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 6-27-11

CONTENT

House Bill 4749 would amend the Public Health Code to do the following:

- **Prohibit a person from purchasing more than 3.6 grams of ephedrine or pseudoephedrine within one day, or more than nine grams within 30 days; and prescribe a misdemeanor penalty for a violation.**
- **Eliminate provisions allowing a retailer to monitor ephedrine and pseudoephedrine products through antitheft devices and video surveillance, rather than maintaining them behind the counter or in a locked case.**
- **Eliminate an exemption from the Code's sales log requirements for a retailer who maintains ephedrine and pseudoephedrine products behind the counter or in a locked case.**
- **Expand the transaction information that must be included in a sales log.**
- **Eliminate limits on the amount of ephedrine or pseudoephedrine that may be sold in a single transaction, and instead prohibit sales in excess of the daily and monthly limits described above.**
- **Eliminate a requirement that a retailer post a sign informing employees and customers of ephedrine and pseudoephedrine sales laws.**

House Bill 4750 would amend a statutory citation in the Code of Criminal Procedure's sentencing guidelines to reflect a revision proposed by House Bill 4749.

House Bill 4750 is tie-barred to House Bill 4749. House Bill 4749 is tie-barred to Senate Bill 333, which would amend the Public Health Code to require a retailer to submit electronically to the National Precursor Log Exchange (described below, under **BACKGROUND**) information regarding ephedrine and pseudoephedrine sales.

House Bill 4750 is described below in further detail.

Purchase Limits & Penalties

The bill would prohibit a person from purchasing more than 3.6 grams of ephedrine or pseudoephedrine alone or in a mixture within a single calendar day, or more than nine grams within a 30-day period. A person who violated the prohibition would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500.

Retailer Provisions

Product Maintenance. Under the Code, except as otherwise provided, a person who possesses ephedrine or pseudoephedrine for retail sale must maintain all products that contain 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 in accordance with one of the following:

- Behind a counter where the public is not permitted.
- Within a locked case so that a customer wanting to gain access to the product must ask a store employee for assistance.

Alternatively, a retailer may maintain the products within 20 feet of a counter that allows the attendant to view them in an unobstructed manner, or use an antitheft device that uses special package tags and detection alarms designed to prevent theft, along with constant video surveillance. The video images must be maintained for at least six months and made available to any law enforcement agency upon request. If the products are maintained within 20 feet of a counter that is not staffed by one or more employees at all times, the retailer must use antitheft devices and video surveillance when the counter is not staffed.

The bill would delete all of the provisions related to maintaining the products within 20 feet of a counter.

Currently, if the products are maintained behind the counter or in a locked case, the retailer is not required to maintain a log (described below) or any other type of record detailing the sale of the products. The bill would eliminate this provision.

Sales Log. The Code requires a person who sells an ephedrine or pseudoephedrine product to do the following:

- Require a purchaser to produce a valid photo identification that includes his or her name and date of birth.
- Maintain a log or some type of record detailing the sale, including the date, the buyer's name and date of birth, and the amount and description of the product.

The log or other record must be maintained for at least six months and made available only to a law enforcement agency upon request.

The bill would require the log or record also to include the time of purchase; the buyer's address; and a description of the identification used to make the purchase, such as the state in which a driver license was issued and the number of that license. The seller also would have to require the purchaser to sign the log at the time of sale. Information entered into the National Precursor Log Exchange would satisfy the sales log or record requirements.

Prohibitions & Penalties. The Code prohibits a retailer from knowingly doing any of the following:

- Selling an ephedrine or pseudoephedrine product to a person who is younger than 18 years old.
- Selling in a single over-the-counter (OTC) transaction more than two packages, or 48 tablets or capsules, of an ephedrine or pseudoephedrine product to an individual.
- Selling in a single OTC sale more than two personal convenience packages containing two tablets or capsules of an ephedrine or pseudoephedrine product.

The bill would delete the prohibition on sales of more than two packages or 48 tablets or capsules. Instead, a retailer could not sell more than 3.6 grams of ephedrine or

pseudoephedrine alone or in a mixture to any individual on any single calendar day, or more than nine grams to any individual within a 30-day period.

Under the Code, a person who violates any of these prohibitions is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$50 for each violation. The bill would increase the maximum fine to \$500.

Retailer Signs. The Code requires a retailer to post, in a place close to the point of sale and conspicuous to employees and customers, a sign produced by the Department of Community Health (DCH) that includes a statement explaining the ban on sales of ephedrine and pseudoephedrine products to minors, the photo ID and sales log requirements, and the ban on sales of more than two packages or 48 tablets or capsules. The DCH must produce the sign and make it available to licensed retailers free of charge. The Code also requires retailers to obtain the sign from the DCH's website and to provide copies of it, upon request, to customers.

The bill would delete all of these provisions.

MCL 333.17766c et al. (H.B. 4749)
777.13n (H.B. 4750)

BACKGROUND

The National Precursor Log Exchange (NPLEx) 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 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 misdemeanor. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal and State civil infraction 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.