

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 114 (Delegate Morhaim)
Health and Government Operations

Public Health - Ephedrine Group Alkaloids - Prohibition

This bill prohibits the sale, distribution, prescription, or dispensing of dietary supplements containing “ephedrine group alkaloids” except under certain circumstances. Health care practitioners may prescribe or dispense ephedrine group alkaloids if the practitioner is practicing within his or her scope of practice and prescribes or dispenses these dietary supplement products while the patient is under a practitioner’s direct care. Health care practitioners may not prescribe such a dietary supplement for weight loss, body building, or athletic performance enhancement. These dietary supplements may be sold or distributed directly to a health care practitioner or a licensed pharmacist. A violator is guilty of a misdemeanor and on conviction for a first violation is subject to a prison term of up to one year or up to a \$5,000 fine, or both. For each subsequent violation, a person is subject to a prison term of up to three years or up to a \$20,000 fine, or both.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provisions.

Small Business Effect: Potential loss of revenue for health care practitioners and small business pharmacies who are prescribing or selling this supplement for weight loss, body building, or athletic performance enhancement.

Analysis

Current Law: State statute does not prohibit or otherwise restrict the sale, distribution, prescription, or dispensing of dietary supplements containing ephedrine group alkaloids.

Background: The federal Food and Drug Administration (FDA) issued a consumer alert December 30, 2003 on the safety of dietary supplements containing ephedra and expects to publish a final rule that would ban the sale of dietary supplements containing ephedrine alkaloids.

Ephedra is a naturally occurring substance derived from botanicals. Ephedrine is its principle effective ingredient. Ephedra products have been extensively promoted for weight loss, sports enhancement, and increasing energy. An adrenaline-like stimulant, ephedra can have potentially dangerous side effects: elevated blood pressure, rapid heartbeat, nerve damage, muscle injury, psychosis, memory loss, heart attack, stroke, seizure, and death.

State Revenues: General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court. The bill would not affect Department of Health and Mental Hygiene (DHMH) general fund revenues.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are

generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The bill would not affect DHMH general fund expenditures. The Laboratories Administration's Division of Drug Control would continue to perform routine pharmacy inspections.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, U.S. Food and Drug Administration, Department of Legislative Services

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mh/jr

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