

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 372

(Senator Gladden)

Judicial Proceedings

Crimes - Pseudoephedrine - Prohibitions

This bill provides that a person may not dispense, sell, or distribute pseudoephedrine, except when done by or under the supervision of a licensed pharmacist.

Fiscal Summary

State Effect: The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Minimal. Based on the Oklahoma experience, the effect of this bill on small business pharmacies and pharmacists would be minimal.

Analysis

Summary: In a transaction involving the dispensing of pseudoephedrine: (1) the authorized provider must affix to the container, in addition to any other label already there, a label with the dispenser's name, signature, registry number, the date the pseudoephedrine is dispensed, and the name of the person acquiring the pseudoephedrine.

The person acquiring the pseudoephedrine is required to produce a valid government-issued photo identification with date of birth indicating that the person is over the age of 18. The person must also sign a written log or mechanism approved by the Alcohol and Drug Abuse Administration that contains: (1) the date of the transaction; (2) the name of

the person acquiring the pseudoephedrine; and (3) the amount of pseudoephedrine in the transaction.

Except when dispensed in accordance with a valid prescription, a person may not acquire more than nine grams of pseudoephedrine within a 30-day period. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000.

Current Law: A person may not dispense a controlled dangerous substance without a written prescription from an authorized provider if the substance is: (1) listed in Schedule II; and (2) a drug limited to prescription use under the Health – General Article. Such a controlled dangerous substance may only be dispensed without a written prescription by: (1) an authorized provider who is not a pharmacist and who dispenses the controlled dangerous substance directly to an ultimate user; or (2) a pharmacist if an emergency exists, the pharmacist dispenses the drug under regulations of the Department of Health and Mental Hygiene on an oral prescription that the pharmacist reduces promptly to writing and keeps on file, and federal law authorizes the oral prescription.

A prescription for a controlled dangerous substance listed in Schedule II shall be kept on file in conformity with applicable requirements for records and inventories of these provisions. A person may not refill a prescription for a controlled dangerous substance listed in Schedule II.

Background: Pseudoephedrine is a decongestant in several over-the-counter medications used to relieve nasal discomfort caused by colds, allergies, and hay fever. This medication is sometimes prescribed for other uses.

Pseudoephedrine is also used to make methamphetamine, a Schedule II controlled dangerous substance. A substance is listed in Schedule II if the substance includes a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: (1) amphetamine, its salts, optical isomers, and salts of its optical isomers; (2) phenmetrazine and its salts; (3) a substance that contains any methamphetamine, including salts, optical isomers, and salts of its optical isomers, in combination with one or more active nonnarcotic ingredients in recognized therapeutic amounts; (4) methylphenidate; and (5) methamphetamine, its salts, optical isomers, and salts of optical isomers.

An Oklahoma law that took effect in April 2004 provides that medicines with pseudoephedrine must be dispensed by a licensed pharmacist or pharmacy technician, and purchasers must show identification with their date of birth and sign for the product.

Buyers are limited to nine grams (or 366 30-milligram pills) in a 30-day period. The government can make exceptions in areas where pharmacies are not easily accessible.

Oklahoma officials report that their law has driven down methamphetamine lab seizures by more than 80%. The Drug Enforcement Administration has reported that more than 7,000 methamphetamine labs were dismantled nationwide in 2003.

Nine bills have been introduced in the 108th Congress to address the problems connected with pseudoephedrine products used in the manufacture of methamphetamine. Federal legislation introduced in 2004 to limit purchases of pseudoephedrine products was not passed.

See **Appendix 1** for a list compiled by the National Conference of State Legislatures to track State action on this issue (as of December 1, 2004.)

The Consumer Health Products Association (CHPA) is promoting legislation both at the State and federal level that would create a two package/six gram sales limit on all pseudoephedrine and ephedrine containing products. The association also wants to implement registration procedures for retailers of pseudoephedrine and ephedrine containing products that lack U.S. Drug Enforcement Administration certification and stiffen criminal penalties for those producing methamphetamine and certain “club drugs” for distribution.

CHPA is providing funding directly to states interested in implementing *Meth-Watch* programs in their communities; making available a national web site and resource center; and providing training, technical assistance, and retail support. CHPA created a model *Meth-Watch* program for states to help curtail sales of pseudoephedrine products for illicit purposes and to promote cooperation between retailers and law enforcement.

State Revenues: General fund revenues could increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

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

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC 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 \$310 per month.

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

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration 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 \$33 to \$119 per inmate in fiscal 2006.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Oklahoma State Board of Pharmacy, Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2005
mp/jr

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Appendix 1

State	Restrictions on the Sale of Pseudoephedrine	Restrictions on the Possession of Pseudoephedrine
Alabama	Products must be stored behind a counter or barrier. Three packs at a time maximum.	§ 13A-12-217: cannot possess any amount with intent to manufacture CS (B felony).
Alaska	No	§ 11.73.020: cannot possess any with intent to manufacture (C felony).
Arizona	§ 13-3404: 4 packages less.	§ 13-3404.01: cannot possess more than 24 grams.
Arkansas	§ 5-64-1103: 3 packs, 1 pck w/96 pills.	§ 5-64-1101/1102: prohibits possession of 9g.
California	§ 11100: 3 packs or 9g.	Restricts possession of phenylacetone (not pseudo).
Colorado	§ 18-18-412.5: illegal if known it will be used to make meth.	§ 18-18-204: ephedrine and more list as CSII. (CO includes ephedrine etc as CSII drug.)
Connecticut	No	No
Delaware	No	No
Florida	§ 893.149: illegal if known it will be used to make meth.	§ 893.149: cannot possess with intent to manufacture (2 nd D felony).
Georgia	Prohibits the sale and possession of more than 300 pills or 9g.	Cannot possess w/intent to distribute illegally.
Hawaii	§ 329-65: illegal if known it will be used to make meth (5 yrs/\$100K fine).	§ 329-65: cannot possess with intent to manufacture (\$100K/10 yrs).
Idaho	Illegal if known it will be used to make meth.	§ 37-2732B: cannot possess more than 500g (felony) (trafficking immediate precursor to meth) min 10/max life).
Illinois	3 grams per package or 2 packages in a single retail transaction. Single active ingredients must be stored behind a counter.	§ 570/401: cannot possess with intent to manufacture. (Penalties vary depending on quantity.)
Indiana	§ 35-48-4-14.5: illegal if known it will be used to make meth (D felony).	§ 35-48-4-2: cannot possess with intent to manufacture (B Felony). § 35-48-4-14.5: cannot possess more than 10g (D felony). Class C felony if possess 10g & have gun or near school.
Iowa	Illegal if known to be used to make meth.	Cannot possess with intent to manufacture (D felony).
Kansas	§ 65-7006: illegal if known it will be used to make meth.	§ 65-7006: cannot possess with intent to manufacture (level 1 felony).
Kentucky	§ 218A.1438: illegal if known chemical is to be used to make meth.	§ 218A.1437: 24g (D felony) cannot possess any with intent to manufacture.
Louisiana	§ 40:967: No amount but record of sales maintained.	§ 40.962.1.1: 12g w/o prescription unless for "valid medicinal purposes" (2 yrs/\$2K). § 40:967: cannot possess with intent to manufacture (2-30 yrs/\$50K).
Maine	No	No
Maryland	No	No
Massachusetts	No	No
Michigan	No	§ 333.17766c: 12g w/o prescription (2yrs/\$2K).

State	Restrictions on the Sale of Pseudoephedrine	Restrictions on the Possession of Pseudoephedrine
Minnesota	§ 152.135: illegal if known it will be used to make meth.	§ 152.021(2a): cannot possess with intent to manufacture (3yrs/\$5K)
Mississippi	No sale of 2 or more “listed precursor chemical” if known chemical is to be used to make meth (30 yrs/\$5K). No sale 250 dosages or 15g of pseudo if known chemical is to be used to make meth. (5 yrs/\$5K)	Cannot possess 2 or more “listed precursor chemical” w/intent OR when know/RTK it is to be used to make meth (30 yrs/\$5K). Cannot possess 250 dosages or 15g if know/RTK it is to be used to make meth (5 yrs/\$5K).
Missouri	§ 195.417: 2 pkgs or 6 g. § 195.418: limits sale to no more than 3 grams per package.	§ 195.246:24g: cannot possess any with intent to manufacture (D felony).
Montana	No	§ 45-9-107: cannot possess with intent to manufacture (2-20 yrs/\$50K).
Nebraska	§ 28-450: illegal if known it will be used to make meth.	§ 28-452: cannot possess with intent to manufacture (IV felony).
Nevada	No	§ 453.322: cannot possess with intent to manufacture (B felony).
New Hampshire	No	No
New Jersey	No	No
New Mexico	§ 30-31B-12: offers various transfer and recordkeeping regulation of registrants and licensees.	No
New York	No	
North Carolina	§ 90-95(d1): illegal if known it will be used to make meth (H felony).	§ 90-95(d1): cannot possess with intent to manufacture (H felony).
North Dakota	§ 19-03.4-08: no retail sale of more than 3 grms in package.	§ 19-03.4-07: 24g or more is <i>prima facie</i> E of intent for purpose of unlawful possession of drug paraphernalia (§ 19-03.4-03)(C felony).
Ohio	No	
Oklahoma	§ 2-333: illegal if known it will be used to make meth (max 10 yrs.). 9 gram maximum. Must be sold by pharmacist. Photo copy of ID required. Records kept.	2-332: cannot possess with intent to manufacture (24g. is a rebuttable presumption of intent) (max 5 yrs). § 2-401: no manufacture pseudo to make meth (7 yrs).
Oregon	§ 475.973: 9g. § 475.950: must report certain precursor transactions. Over the counter prepared substances are excluded from these requirements.	§ 475.973: 24g unless more than 9g is bought w/n 7 days)(A misd).
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	No	No
South Dakota	No	No
Tennessee	No	No

State	Restrictions on the Sale of Pseudoephedrine	Restrictions on the Possession of Pseudoephedrine
Texas	§ 481.077: reporting requirements of chemical precursor transactions.	§ 481.124: cannot possess with intent to manufacture. Intent presumed if possess more than 9 grms, 3 retail packages, or 300 tablets AND a listed chemical precursor (state jail felony).
Utah	Recordkeeping.	§ 58-37c-20: 12g (A misd)(affirmative defenses provided).
Vermont	No	No
Virginia	No	No
Washington	§ 69.43.110: 3 pkgs or 3 grms of pseudo.	§ 69.43.120: 15g (gross mids).
West Virginia	No	No
Wisconsin	No	No
Wyoming	§ 35-7-1059: illegal if known it will be used to make meth (20 max/\$25K w/ enhancements).	§ 35-7-1059: cannot possess with intent to manufacture (20 max/\$25K w/enhancements).