

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 774 (Senator Gladden)
Judicial Proceedings

Controlled Dangerous Substances - Pseudoephedrine Products

This bill restricts the sale of pseudoephedrine products and requires the Department of Health and Mental Hygiene (DHMH) to track the sale of those products.

Fiscal Summary

State Effect: General fund expenditures for DHMH could increase by \$83,000 in FY 2007 to hire a pharmacist to monitor the real-time statewide electronic log of pseudoephedrine product purchases. One-time FY 2007 expenditures to develop the log could cost as much as \$500,000. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	-	-	-	-	-
GF Expenditure	83,000	91,400	96,200	101,300	106,700
Net Effect	(\$83,000)	(\$91,400)	(\$96,200)	(\$101,300)	(\$106,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

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

Bill Summary: A pseudophedrine product may only be displayed for sale: (1) behind a store counter not accessible to customers; (2) in a secure case that requires a store employee to help customers access the product; or (3) on the sales floor if the product is within 30 feet and direct line of sight of a cash register or store counter staffed by one or more employees, reliable antitheft devices are used in the product's packaging, restricted access shelving is used, or the product is under constant video surveillance.

To purchase a pseudophedrine product, a person must produce a valid government-issued photo identification with the person's date of birth indicating the person is over 18 years old. A person also must sign a log or receipt that shows the transaction's date, the person's name and address, and the amount of product purchased. Each pharmacy must keep a record of the signed logs or receipts and post signs explaining the product's restrictions.

DHMH must establish and maintain a real-time statewide electronic log of pseudophedrine product purchases and provide pharmacies and retail establishments with technical assistance to meet the bill's requirements. DHMH may disclose information from the electronic log only in accordance with a search warrant.

Except when dispensed according to a valid prescription or by a licensed health care practitioner carrying out his or her profession, a person may not purchase more than nine grams of any pseudophedrine product within any 30-day period. A violator is guilty of a misdemeanor and subject to a maximum penalty 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 DHMH 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.

Currently, Maryland law subjects a person convicted of manufacturing methamphetamine to maximum imprisonment of 5 years and subjects a person convicted of importation to a maximum of 25 years.

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.

The Board of Pharmacy repeatedly proposed a regulation requiring a pharmacy to keep single-entity pseudoephedrine products in a secured area with the prescription drugs. Pseudoephedrine would only be dispensed to people who are 18 years old or older with a valid government-issued driver's license or identification card that includes the date of birth. This regulation would not apply to pseudoephedrine products dispensed with a prescription. This proposed regulation has not yet gone into effect, and is the subject of an upcoming AELR committee hearing.

Federal officials have called methamphetamine "the fastest growing drug threat in the United States." Its popularity began 20 years ago among biker gangs in the Southwest and is steadily advancing eastward. A 2005 survey of the National Association of Counties reported that over 75% of county law enforcement agencies in the Northwest and Southwest named methamphetamine as the number one drug problem. Over half of the agencies in the Midwest made the same report. By contrast, 25% of agencies in the Southeast, including Maryland, and 4% of Northeast agencies called methamphetamine their primary drug problem.

Methamphetamine-related hospital admissions mirror this trend. Treatment admissions from 1998 to 2002 in California grew from 49 to 200 per 100,000; in Iowa the rate went from 9 to 198 per 100,000. The National Survey of Drug Abuse and Health reports that the number of people seeking methamphetamine-related treatment has increased nationwide from 2% in 1993 to 7% in 2003. California's increase over 10 years was 30%; the number seeking treatment in Arkansas rose 20%.

To date, methamphetamine's impact in Maryland is minimal, but surrounding areas have seen much more activity with an increasing number of methamphetamine labs seized. One methamphetamine lab was seized in Virginia in 2000 compared to 61 in 2004. The number of labs seized in West Virginia between 2000 and 2004 increased from 3 to 84 and in Pennsylvania from 8 to 63.

As is true nationwide, methamphetamine users in Maryland have historically been concentrated in rural areas. The most likely users are white, working class, in their twenties or thirties, and almost as likely to be female as male. However, use among white-collar professionals and long-distance truckers is increasing.

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.

Twenty-two bills have been introduced in the 109th Congress to address the problems connected with pseudoephedrine products used in the manufacture of methamphetamine. Federal legislation introduced in 2005 and 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 August 11, 2005).

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 by an estimated \$82,968 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring a pharmacist to monitor the statewide electronic log of pseudoephedrine product sales and provide pharmacies and retail establishments with technical assistance. It includes a salary, fringe benefits, one-time start-up costs, a vehicle, and ongoing operating expenses. This estimate does not reflect the costs of developing a real-time statewide electronic log of pseudoephedrine product purchases, which cannot be reliably estimated at this time but may cost as much as \$500,000. It also does not reflect the costs for maintaining the electronic log, which may cost as much as \$50,000 annually. The costs for developing and maintaining the electronic log cannot be reliably determined at this time.

Salary and Fringe Benefits	\$63,664
Vehicle	11,000
Other Operating Expenses	<u>8,304</u>
Total FY 2007 State Expenditures	\$82,968

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

General fund expenditures in fiscal 2007 for one-time computer programming costs to develop a real-time statewide electronic log of pseudoephedrine product purchases would be significant. DHMH advises that the one-time computer programming costs would be \$500,000 in fiscal 2007 but does not provide any justification for that amount. DHMH's estimate also included an annual \$50,000 cost for software maintenance again without justification.

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 2007 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 \$1,974 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 \$341 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 2007.

Additional Information

Prior Introductions: SB 372 of 2005, which would have prohibited dispensing, selling, or distributing pseudoephedrine except when done by or supervised by a licensed pharmacist, received an unfavorable report by the Judicial Proceedings Committee.

Cross File: HB 41 (Delegate Bromwell) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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Appendix 1

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
Alabama	Maximum two packages per transaction or 6g. Maximum 30mg per tablet and exceeding dosages must be in blister packets. Products placed in manner requiring employee assistance and in blister packets. ID required, must be 18, and purchaser information logged (C felonies).	13A-12-217: Cannot possess any amount with intent to manufacture (B felony). Cannot possess 6g over a 30 days with intent to manufacture.
Alaska	No	§11.73.020: Cannot possess any with intent to manufacture (C felony).
Arizona	§13-3404: Maximum three packages or 9g. Product placed in manner requiring employee assistance.	§13-3404.01: Cannot possess more than 24g (Class 2 felony).
Arkansas	§5-64-1103: Three packs, one pack with 96 pills. Schedule V controlled substance – dispensed by pharmacist. Maximum 9g over 30 days. ID required and purchaser information logged.	§5-64-1101/1102: Prohibits possession of 9g over 30-day period.
California	§11100: Three packs or 9g.	Restricts possession of phenylacetone (Not pseudo).
Colorado	§18-18-412.5: Illegal if known it will be used to make meth. Blister packs to be two dosage units. Maximum of three of same precursors or combination of two or more precursors (Class 2 misdemeanor).	§18-18-204: Ephedrine and more list as CSII (CO includes ephedrine etc as CSII drug).
Connecticut	No	No
Delaware	Products placed in a manner requiring employee assistance. Maximum 9g over 30 days. Must be 18 years old. ID required and purchaser information logged. Business maintains log, including date of transaction, purchaser's name, and quantity (Class A misdemeanor).	No
Florida	§893.149 Illegal if known it will be used to make meth. Maximum of three packages or 9g. Products placed in manner requiring employee assistance. Mandatory employee training program.	§893.149: Cannot possess with intent to manufacture (Second D felony).

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
Georgia	Products to be sold in blister packets. Prohibits the sale and possession of more than three pills or 9g. Products placed in manner requiring employee assistance and in blister packets. Maximum of three packages or 9g. Purchaser ID required.	Cannot possess with intent to distribute illegally or manufacture. Prohibits possession of any substance with intent to manufacture a Schedule I or Schedule II controlled substances.
Hawaii	§329-65: Illegal if known it will be used to make meth. (five years/\$100K fine).	§329-65: Cannot possess with intent to manufacture (\$100K/10 years).
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	Maximum 3g per package or two 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). Deemed a Schedule V drug. Purchaser must be 18. Maximum 3g a week per transaction. Products placed in manner requiring employee assistance or under surveillance. ID required and purchaser information is to be logged (first offense/Class C misdemeanor; second/subsequent Class A misdemeanor).	§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 and have gun or near school.
Iowa	Illegal if known to be used to make meth. Limits sales to 360mg or less, and if not gel or liquid sold behind the counter. Products must be displayed in a locked cabinet or behind the counter where the public is not permitted. Limitation of one product over a 24-hour period, or more than 7,500mg over 30 days, either separately or collectively (a serious misdemeanor). Purchaser's required to present photo ID and sign a logbook, including their name and address.	Cannot possess with intent to manufacture (D felony).

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
Kansas	§65-7006: Illegal if known it will be used to make meth. Sales only by pharmacists or technicians. Maximum three packages a week. ID required and purchaser information is to be logged	§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. Sales only by a pharmacist or pharmacy technician. Must be 18 and ID required. Purchaser information is to be logged (\$1000 fine). Maximum 9g over 30 days. Three packages per transaction.	§218A.1437: 24g (D felony) Cannot possess any with intent to manufacture. Deems “intent to sell” as satisfied upon possessing two or more substances or pieces of equipment used to manufacture meth. Deems possession of more than 9g within any 30-day period to be prima facie evidence of intent to use a product(s) as a precursor to meth.
Louisiana	§40:967: ID required and log maintained. Maximum three packages or 9g per transaction and able to be displayed. Display within 30 feet of counter under continuous video surveillance.	§40.962.1.1: 12g without prescription unless for “valid medicinal purposes” (two years/\$2K). §40:967: Cannot possess with intent to manufacture (2-30 years/\$50K).
Maine	Maximum 3g of precursor in product and sold in blister packs. Sales only by authorized pharmacists. Products placed in manner requiring employee assistance; or if a single dose package with no more than 60mg of precursor, then it may be 30 feet within direct sight of the register. Maximum 3g per transaction.	No
Maryland	No	No
Massachusetts	Sales only by licensed pharmacists. Log maintained and ID required. Maximum 9g over 30 days.	No
Michigan	Product either placed in manner requiring employee assistance or within 20 feet of counter, in employee’s view, under surveillance, and with anti-theft devices. Log maintained and ID required.	§333.17766c: 12g without prescription. (two years/\$2K). Prohibits owning/using a building, land, automobile, or providing equipment for meth. manufacturing (25 years/\$25K).
Minnesota	§152.135 : Illegal if known it will be used to make meth. Maximum 3g in product and if in blister pack form, each blister may contain no more than two doses per transaction and no more than 6g over 30 days. Products to be placed	§152.021(2a): Cannot possess with intent to manufacture (three years/\$5K).

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
Minnesota (Cont'd.)	in manner requiring employee assistance and sold only by pharmacists, pharmacy techs, or pharmacy clerks. Must be 18 and log maintained (violation is a misdemeanor with up to 90-days imprisonment, fined up to \$1,000, or both).	
Mississippi	<p>No sale of two or more “listed precursor chemical” if known chemical is to be used to make meth. (30 years/\$5K).</p> <p>No sale 250 dosages or 15g of pseudo if known chemical is to be used to make meth. (five years/\$5K). Must be stored in locked display case within 30feet of register or under video surveillance.</p> <p>No more than two packages or 6g in single purchase or 9g over 30 days. Retail packages to be in 3g packages. Products placed in manner requiring employee assistance. Requires maintenance of sales receipts for precursor products and photo ID presentation (\$250 fine). Retailers elude liability by establishing and conducting training on legal requirements.</p>	<p>Cannot possess two or more “listed precursor chemical” with intent OR when know/RTK it is to be used to make meth. (30 years/\$5K).</p> <p>Cannot possess 250 dosages or 15g f know/RTK it is to be used to make meth. (five years/\$5K).</p> <p>Establishes a rebuttable presumption of intent to use a product as a precursor drug upon possession of one or more product(s) containing 24g.</p>
Missouri	<p>§195.417: Two packages or 6g.</p> <p>§195.418: Limits sale to no more than 3g per package. Sales must be behind the counter and by pharmacist or their technician. Deems precursors Schedule V drugs. Maximum 9g over 30 days. ID required and must be 18.</p>	§195.246: 24g Cannot possess any with intent to manufacture (D felony).
Montana	9g maximum over 30-day period. Requires purchaser ID presentation, log maintenance, and products placed in manner requiring employee assistance (\$100-\$500/one year).	<p>§45-9-107: Cannot possess with intent to manufacture (2-20 years/\$50K). Cannot possess more than 9g over 30-day period.</p> <p>Second/subsequent possession offense (five years/\$50K or commitment to treatment facility).</p>
Nebraska	§28-450: Illegal if known it will be used to make meth. Products in blister packets containing no more	§28-452: Cannot possess with intent to manufacture (IV felony).

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
Nebraska (Cont'd.)	than two dosage units. Maximum 1,400mg cap over 24 hours. Products placed in manner requiring employee assistance. ID required and must be 18.	
Nevada	No	§453.322: Cannot possess with intent to manufacture (B felony).
New Hampshire	No	No
New Jersey	Maximum three packages or 9g per transaction. Must inform law enforcement upon loss of more than 30g.	Provides inference for trier of fact of intent to manufacture methamphetamine for a person possessing more than 30g or 10 packages of precursor products.
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 3g in package. Requires ID presentation and log maintenance. Products placed in manner requiring employee assistance, surveillance, or only display one package.	§19-03.4-07: 24g or more is prima facie 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. (maximum 10 years.) Maximum 9g. 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) (maximum five years). §2-401: No manufacture pseudo to make meth. (seven years).
Oregon	§475.973: 9g. §475.950: Must report certain precursor transactions. Over the counter prepared substances are excluded from these requirements. Prescription and ID required.	§475.973: 24g unless more than 9g is bought within seven days) (A misdemeanor).
Pennsylvania	No	No
Rhode Island	No	No
South Carolina	No	Raises penalty for possession, sale, or trafficking of methamphetamine to be in compliance with crack cocaine.

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
South Dakota	Prohibits more than two packages of products (Class 1 misdemeanor). Requires products placed in manner requiring employee assistance or accompanied with an anti-theft device. Products must be within 20feet of counter.	No
Tennessee	Sales only by pharmacists. Maximum three packets or 9g over 30 days. Products placed behind counter, purchaser ID required, and purchaser information logged (all Class A misdemeanors).	Possession of more than 20g of precursor is prima facie evidence of intent to violate.
Texas	§481.077: Reporting requirements of chemical precursor transactions.	§481.124: Cannot possess with intent to manufacture. Intent presumed if possess more than 9g, three retail packages, or 300 tablets AND a listed chemical precursor (state jail felony).
Utah	Recordkeeping	§58-37c-20: n 12g. (A misdemeanor) (affirmative defenses provided).
Vermont	No	No
Virginia		Possession of two or more precursors with intent to manufacture is Class 6 felony. Accommodation sale is Class 1 misdemeanor. Selling, manufacturing, or intent to do either, with Schedule III drugs is a Class 5 felony, Schedule IV drugs is a Class 6 felony. Class 1 misdemeanor if given without compensation. Conviction for manufacturing meth. is first offense/10 to 40 years; second/10 years to life; third or subsequent/10-life with mandatory three year imprisonment.
Washington	§69.43.110: Maximum two packages or 3g. Products placed behind counter, purchaser ID required, must be 18. Pilot program log maintenance by 2006. Prohibits sale whereupon total prior monthly sales exceed 10% of the owner/vendor's total monthly sales of nonprescription drugs in March through October, or 20% from November through February. Shopkeepers must also maintain inventory records of the receipt and disposition of nonprescription drugs.	§69.43.120: 15g (gross misdemeanor).

State	Restrictions on the sale of pseudoephedrine:	Restrictions on the possession of pseudoephedrine:
West Virginia	Purchaser ID required. Schedule V classification.	No
Wisconsin	Product sold by pharmacists or under studies and purchaser ID required.	No
Wyoming	§35-7-1059: Illegal if known it will be used to make meth. (20max/\$25K with enhancements). Packages are to be in 3g packages and blister pack in two dosage units. Maximum two packages per transaction. (first offense/misdemeanor/\$100; second/\$500; third/six months/\$1,000). ID presentation. Products placed in manner requiring employee assistance or within 30 feet and direct sight of counter (felony). Requires board registration to sell.	§35-7-1059: Cannot possess with intent to manufacture (20max/ \$25K with enhancements). Prohibits possession of more than 15g of products (felony -15 years/\$25K).

Source: National Conference of State Legislatures