Department of Legislative Services

Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 1110 (Senator Rosapepe)
Rules

Sexual Supplement Safety Act

This bill prohibits the distribution, marketing, selling, or offering for sale of an "aphrodisiac drug product" except on a valid prescription. An "aphrodisiac drug product" means a drug, medicine, chemical, preparation, or formula with labeling claims of arousing or increasing sexual desire or improving sexual performance. Violators are subject to civil penalties of $5,000 for the first violation and $10,000 for each subsequent violation.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: Potential minimal increase in local government revenues due to the bill's civil penalty. Enforcement can be handled with existing resources, assuming it is based on complaints only and not on inspection of all retailers that sell sexual supplements.

Small Business Effect: Potential minimal.

Analysis

Current Law/Background: State law does not address the issue of aphrodisiac drug products for adults or minors. Federal law requires retail stores to keep over-the-counter medications containing pseudoephedrine behind the counter or in a locked cabinet.

The U.S. Food and Drug Administration (FDA) regulates dietary supplements. Under the Dietary Supplement Health and Education Act of 1994, dietary supplement manufacturers are responsible for ensuring that dietary supplements are safe before they

are marketed, and FDA is responsible for taking action against any unsafe dietary supplement product after it reaches the market. Generally, manufacturers do not need to register products with FDA nor get FDA approval before producing or selling dietary supplements. The Federal Trade Commission regulates dietary supplement advertising.

In 2003, FDA warned consumers not to purchase certain products, sold over-the-counter, that manufacturers claimed increase stamina, confidence, and performance in women. FDA said that the products contained a prescription drug ingredient that carries potential health risks. Since 2004, FDA has identified several products that contain potentially harmful, undeclared ingredients and are being sold online as dietary supplements for treating erectile dysfunction and enhancing sexual performance.

Additional Information

Prior Introductions: None.

Cross File: HB 707 (Delegate Ali, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), U.S. Food and Drug Administration, Department of Legislative Services

Fiscal Note History: First Reader - March 24, 2010
ncs/mwc

Analysis by: Sarah K. Volker

Direct Inquiries to:
(410) 946-5510
(301) 970-5510