



Senate Fiscal Agency
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Senate Bills 401 and 402 (as reported without amendment)
Sponsor: Senator Ed McBroom
Committee: Health Policy and Human Services

Date Completed: 11-15-21

RATIONALE

Ephedrine is a decongestant often used for temporary relief of shortness of breath, chest tightness, and wheezing due to asthma. Pseudoephedrine is a decongestant and, in higher doses, can be used as a stimulant. Pseudoephedrine also can be used to synthesize methamphetamine, a Schedule 2 drug that is a highly addictive and often-abused stimulant that affects a person's central nervous system. Under the Federal Combat Methamphetamine Epidemic Act of 2005, to purchase pseudoephedrine a person must present identification and record his or her purchase with a pharmacy. According to the Michigan State Police (MSP), this requirement decreased the production of methamphetamine in the State.

In 2012, in an attempt to decrease further the production of methamphetamine, the Michigan Legislature required pharmacies and drug retailers to track the sale of pseudoephedrine and submit it to the National Precursor Log Exchange (NPLEx), an electronic tracking system used in the United States to provide real-time data to law enforcement. The legislation also established limits to the amount of ephedrine and pseudoephedrine that a person may purchase, and a retailer may sell, in a month and required a "stop-sale" mechanism to prevent sales to purchasers flagged by the system for exceeding the 30-day purchase limit. Recent data from the NPLEx suggest that the production of methamphetamine using pseudoephedrine has continued to decline in the State, but instances of blocked purchases continue to occur, suggesting continued attempts at purchasing the medication for illicit purposes. Some people believe that a decrease in the amount of ephedrine or pseudoephedrine that a person may purchase, and a retailer may sell, would decrease further the production of methamphetamine using pseudoephedrine. Accordingly, it has been suggested that the monthly and annual amounts of pseudoephedrine a person may purchase be decreased.

CONTENT

Senate Bill 401 would amend Part 177 (Pharmacy Practice and Drug Control) of the Public Health Code to prohibit a person from doing the following:

- Purchasing more than 7.2 grams of ephedrine or pseudoephedrine alone or in a mixture within a 30-day period.
- Purchasing more than 61.2 grams of ephedrine or pseudoephedrine alone or in a mixture within a single calendar year.

Senate Bill 402 would amend Part 177 of the Code to prohibit a person that possesses products that contain any detectable quantity of ephedrine or pseudoephedrine for retail sale under a license issued under the General Sales Tax Act from knowingly selling more than 7.2, instead of nine, grams of ephedrine or pseudoephedrine alone or in a mixture to any individual within a 30-day period.

The bills are tie-barred. Each bill would take effect 90 days after its enactment.

Senate Bill 401

Currently, the Code prohibits a person from, among other things, purchasing more than nine grams of ephedrine or pseudoephedrine alone or in a mixture within a 30-day period. The bill, instead, would prohibit a person from purchasing more than 7.2 grams of ephedrine or pseudoephedrine alone or in a mixture within a 30-day period.

In addition, the bill would prohibit a person from purchasing more than 61.2 grams of ephedrine or pseudoephedrine alone or in a mixture within a single calendar year.

Senate Bill 402

Currently, the Code prohibits a person that possesses 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 of ephedrine or pseudoephedrine for retail sale under a license issued under the General Sales Tax Act from, among other things, knowingly selling more than nine grams of ephedrine or pseudoephedrine alone or in a mixture to any individual within a 30-day period. The bill, instead, would prohibit a person described above from knowingly selling more than 7.2 grams of ephedrine or pseudoephedrine alone or in a mixture to any individual within a 30-day period.

(A person who violates this prohibition is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$500 for each violation.)

MCL 333.17766c (S.B. 401)
333.17766f (S.B. 402)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Federal and State measures to combat the production of methamphetamine have produced positive results. According to the MSP, one indicator of this reduction is the decrease in blocked purchases of pseudoephedrine using the NPLeX system. However, the MSP also reports that methamphetamine producers have started to avoid the monthly limitation set by statute with the introduction of "smurfing", an activity in which a group of people make multiple purchases of products containing pseudoephedrine from multiple retailers to either sell to a methamphetamine producer or trade for the finished product. This strategy makes real-time tracking through the NPLeX system of limited use to law enforcement.

Since smurfing has become an issue in the prevention of methamphetamine production, other states have taken measures to diminish the practice's value. Among other actions, states have reduced the number of allowable grams a person may purchase from a retailer each month. For example, Alaska and Minnesota have limited the purchase of pseudoephedrine to six grams per individual per month, while other states have established limits of 7.0, 7.2, or 7.5 grams per month. Given that the maximum daily dosage for pseudoephedrine is 240 milligrams, a person can consume safely 7.2 grams of pseudoephedrine in a 30-day period. Reducing the allowable grams per month for pseudoephedrine from nine grams to 7.2 would allow consumers to purchase enough pseudoephedrine for legitimate purposes while diminishing the viability of illicit practices like smurfing for methamphetamine production by decreasing the overall availability of the medication.

Opposing Argument

Pseudoephedrine has many uses including temporary relief of sinus pressure, pain, or congestion caused by infection, or breathing difficulties brought about by allergies, among other things. Pseudoephedrine's utility makes it a widely used medication among people of all ages. Limiting the allowable grams that a person may purchase, and a retailer may sell, could restrict access to pseudoephedrine for a household. If one person requires a significant amount of the allowable grams of pseudoephedrine within a 30-day period to manage an allergy's or infection's symptoms, then another person in the household who could not purchase the medication could have difficulty gaining access to it. A decrease in the allowable grams of pseudoephedrine could affect adversely larger households with few people able to purchase the medication.

Response: People do not always consume the maximum daily dosage of pseudoephedrine when using the medication for symptom relief. In fact, many drug labels for pseudoephedrine recommend not taking the medication for longer than seven days at a time, which would leave the some of the medication in the 30-day period unused if the consumer properly followed the instructions on the label. In addition, if the allowable grams per month were inadequate for a consumer, he or she could discuss a prescription with a practitioner for further need of the medication.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 401

The bill would have a negative fiscal impact on the State and local government. New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

Senate Bill 402

The bill could have a positive fiscal impact on the State and local units of government. The Code prescribes a \$500 civil fine for a violation of Section 17766f. Revenue collected from civil fines is used to support local libraries. Additionally, \$10 of the civil fine is deposited into the State Justice System Fund. The Fund supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, State Police, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. The amount of revenue to the State and for local libraries is indeterminate and would depend on the actual number of violations under the revised provisions.

Fiscal Analyst: Joe Carrasco

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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.