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BILL ANALYSIS

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Senate Bill 1212 (Substitute S-1 as reported by the Committee of the Whole)  
Senate Bill 1213 (Substitute S-1 as reported by the Committee of the Whole)  
Sponsor: Senator Bruce Patterson  
Committee: Judiciary

Date Completed: 5-8-06

### **RATIONALE**

Under Michigan law, if an employee steals a prescription drug from the health professional or health facility that employs him or her, the offense evidently is treated in the same manner as any other employee theft. Unless the drug is a controlled substance or its value rises to a level that triggers harsher penalties, the offense apparently is prosecuted as larceny of property worth less than \$200, which is a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$500 (or three times the value of the property). Since access to prescription drugs is greatly restricted, and employees of health professionals or facilities may be trusted with that access, some people believe that employee theft of prescription medications should be designated a felony with more severe penalties than for the theft of other items of similar monetary value.

### **CONTENT**

**Senate Bills 1212 (S-1) and 1213 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to do both of the following:**

- **Prohibit and prescribe penalties for an employee who stole a prescription drug from a health professional or health facility.**
- **Include the violation in the sentencing guidelines.**

The bills would take effect on October 1, 2006. Senate Bill 1213 (S-1) is tie-barred to Senate Bill 1212.

### **Senate Bill 1212 (S-1)**

The bill would prohibit a person who was an employee of a health professional licensed under Article 15 (Occupations) of the Public Health Code or of a facility licensed under Article 17 (Facilities and Agencies) of that Code from stealing a prescription drug from the health professional or facility.

A violation would be a felony punishable by up to two years' imprisonment, a maximum fine of \$5,000, or both. The bill specifies that it would not prohibit a person from being charged with, convicted of, or punished for any other violation of law that was committed by that person while violating the bill.

"Prescription drug" would mean that term as it is defined in the Public Health Code (MCL 333.17708), i.e., a drug dispensed pursuant to a prescription; a drug bearing the Federal legend "CAUTION: federal law prohibits dispensing without prescription"; or a drug designated by the Michigan Board of Pharmacy as a drug that may be dispensed only pursuant to a prescription.

### **Senate Bill 1213 (S-1)**

Under the bill, theft of prescription drugs, as prohibited under Senate Bill 1212 (S-1), would be a Class G property felony with a statutory maximum sentence of two years' imprisonment.

Proposed MCL 750.357c (S.B. 1212)  
MCL 777.16r (S.B. 1213)

## **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.)*

Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

### **Supporting Argument**

According to testimony before the Senate Judiciary Committee by a detective from Brownstown Township, an employee of a pharmacy was caught in a surveillance operation stealing small amounts of prescription medications from his employer. The drugs taken were not classified as a controlled substance, and the pills' value was well below the \$200 level that triggers longer penalties, so the offense could be prosecuted only as a misdemeanor punishable by up to 93 days' imprisonment. Since prescription drugs are a highly regulated commodity and access to them is greatly restricted under both Federal and State law, it stands to reason that theft of prescription medications by someone entrusted with access to them should be treated more severely under the law than the theft of a candy bar by a convenience store clerk. Employee theft of prescription drugs should be subject to a felony penalty.

**Response:** It appears that such a theft can be prosecuted as a felony under current law. Under Section 360 of the Michigan Penal Code, committing larceny by stealing in any of certain locations (including a store, office, or any building used by the public) is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000 (MCL 750.360).

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000.

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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.