

Legislative Analysis



EPHEDRINE AND PSEUDOEPHEDRINE SALES

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House Bill 5088

Sponsor: Rep. John Kivela

House Bill 5089

Sponsor: Rep. Bob Genetski

House Bill 5090

Sponsor: Rep. Aric Nesbitt

Committee: Criminal Justice

Complete to 2-4-14

A SUMMARY OF HOUSE BILLS 5088-5090 AS INTRODUCED 10-22-13

House Bill 5088 would require the MPS to make certain information from the Internet Criminal History Tool (ICHAT) available to NPLeX (the system for electronically tracking sales of ephedrine or pseudoephedrine), require NPLeX to issue a "stop sale alert" if ICHAT showed the purchaser had a conviction involving controlled substances, and prohibit a retailer from selling a product containing ephedrine or pseudoephedrine if a stop sale alert for a prior controlled substance violation were generated.

House Bill 5089 would make it a felony to purchase a product containing ephedrine or pseudoephedrine knowing it would be used to illegally manufacture methamphetamine.

House Bill 5090 would place the above penalty in the sentencing guidelines.

House Bill 5088 would amend the Public Health Code (MCL 333.7340a). Currently, a retailer – before completing a sale under Section 17766f of the code – must electronically submit the required information to the National Precursor Log Exchange (NPLeX) administered by the National Association of Drug Diversion Investigators (NADDI). If the system generates a "stop sale" alert, the retailer is prohibited from completing the sale. (Section 17766f limits the sale of ephedrine and pseudoephedrine to no more than 3.6 grams per individual per day or more than 9 grams per individual for any 30-day period.)

The bill would do the following:

- Require the Department of State Police (MSP) to make information from the Internet Criminal History Tool (ICHAT) available free of charge to NPLeX for the purpose of alerting a retailer that a sale to a purchaser would violate the provisions restricting the allowable amount of ephedrine or pseudoephedrine products that may be sold to a particular purchaser.

- Require the NPLeX system to show if a purchaser had been convicted of a felony violation of Article 7 of the code (Controlled Substances).
- Prohibit a retailer from selling a product containing ephedrine or pseudoephedrine to a purchaser if the NPLeX system generated a stop sale alert on grounds that ICHAT showed the purchaser had been convicted of an Article 7 violation. However, this provision would not prohibit a person from purchasing a product containing either drug under a prescription.

The bill is tie-barred to House Bill 5089.

House Bill 5089 would add a new section to the Public Health Code (MCL 333.7340c, proposed). The bill would prohibit a person from purchasing or otherwise obtaining (or attempting to do either) in Michigan any product containing ephedrine or pseudoephedrine knowing that it is to be combined with any other product containing those substances in Michigan or elsewhere for the purpose of illegally manufacturing methamphetamine.

A violation would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$5,000. A person could be charged with, convicted or, or sentenced for any other violation of law committed by the person while violating proposed Section 7340c. The court would have to report a conviction under proposed Section 7340c to NADDI for entry into NPLeX.

The bill would also prohibit a retailer from dispensing any product containing ephedrine or pseudoephedrine to a person listed in NPLeX as having violated proposed Section 7340c, regardless of whether the person has a prescription for that product. (Note: technically, a retailer who makes such a sale would be in violation of this Section 7340c, but it is not clear if the retailer would be subject to the penalty provided for a violation.)

"Ephedrine" would include the salts and isomers and salts of isomers of ephedrine. "Pseudoephedrine" would include the salts and isomers and salts of isomers of pseudoephedrine.

The bill is tie-barred to House Bill 5088.

House Bill 5090 would amend the Code of Criminal Procedure (MCL 777.13m) to specify that purchasing or obtaining ephedrine or pseudoephedrine for combining to manufacture methamphetamine would be a Class F felony involving a controlled substance punishable by a four-year maximum term of imprisonment.

The bill is tie-barred to House Bill 5089.

FISCAL IMPACT:

House Bill 5088 would result in a minimal fiscal impact on the Department of State Police. To comply with the provisions of the bill, MSP would have to selectively assemble the required criminal history records (CHR) information and "push" that information to the NPLEX system on a daily basis. (NPLEX would not "pull" CHR data from MSP, nor would it be able to review the entire breadth of available CHR information about a purchaser.) This would require some programmatic changes to MSP's CHRI databases and applications. The cost of these programmatic changes would be minimal and could be supported by the existing appropriations available to the department.

House Bills 5089 and 5090 would have an indeterminate fiscal impact on the state's correctional system. Information is not available on the number of persons that might be convicted under the provisions of the bill. New felony convictions could result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.