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Senate Bill 535 (as enacted)
Senate Bill 756 (as enacted)
Sponsor: Senator John Proos
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 276 of 2014

PUBLIC ACT 275 of 2014

Date Completed: 2-24-15

CONTENT

Senate Bill 535 created the "Methamphetamine Abuse Reporting Act" to do the following:

- Require the Michigan Department of State Police (MSP) to give certain information to the National Association of Drug Diversion Investigators (NADDI) if the MSP is notified by a court that a person has been convicted of a methamphetamine-related offense.
- Require the MSP to notify NADDI if the Department corrects or updates any information that it previously reported, and require NADDI to correct, update, or remove that information from the National Precursor Log Exchange (NPLEx).
- Specify that the information provided to NADDI must be for the purpose of generating a stop-sale alert through NPLEx for people who have been convicted of methamphetamine-related offenses until 10 years after the conviction.
- Authorize retailers who sell ephedrine and pseudoephedrine to rely on information provided by the MSP to NADDI for enforcing a stop-sale alert.
- Grant immunity from civil liability to a retailer for relying on and using the information.
- Prohibit the intentional disclosure of information provided under the Act, except as authorized, and make a violation a misdemeanor.

Senate Bill 756 amended the Public Health Code to do the following:

- Require the NPLEx system to be capable of generating a stop-sale alert notifying a retailer that a person is prohibited from buying a nonprescription product containing ephedrine or pseudoephedrine due to a conviction reported under the Methamphetamine Abuse Reporting Act.
- Prohibit the sale of any product containing ephedrine or pseudoephedrine to a person while he or she is subject to a stop-sale alert.
- Require the NPLEx system to have an override function for certain circumstances, and require the system to log each override instance.

The bills took effect on January 1, 2015.

Senate Bill 535

MSP Report to NADDI

If a court notifies the MSP that a person has been convicted of a methamphetamine-related offense on or after the bill's effective date, the MSP must notify NADDI of the conviction. The

MSP may consult with NADDI regarding the conviction information to be provided and may limit the information based upon those requirements. At a minimum, however, the MSP must include all of the following:

- The person's full name.
- The person's date of birth.
- The person's driver license number or State personal ID card number, if known by the MSP.
- A statement that the person has been convicted of a methamphetamine-related offense, which may be satisfied by a statutory citation.
- A statement of the date of conviction.

The MSP also must notify NADDI if the Department does any of the following:

- Corrects or updates any information regarding the conviction, if that information previously was reported to NADDI.
- Determines that the conviction has been set aside or expunged.

Upon receiving that notification, NADDI promptly must correct or update information in, or remove information from, NPLeX.

The bill defines "methamphetamine-related offense" as one or more of the following:

- A violation or attempted violation of Article 7 (Controlled Substances) of the Public Health Code involving methamphetamine.
- A violation or attempted violation of Section 17766c of the Public Health Code (which limits the nonprescription purchase of products containing ephedrine or pseudoephedrine to certain amounts).
- A violation or attempted violation of Section 17766f of the Public Health Code (which governs the nonprescription sale of products containing ephedrine or pseudoephedrine).

Stop-Sale Alert through NPLeX; Disclosure

The information provided to NADDI must be for the purpose of generating a stop-sale alert through NPLeX for people who have been convicted of methamphetamine-related offenses. The stop-sale alert will apply for 10 years after a person's conviction.

The Act allows NADDI to provide a statement on NPLeX that the stop-sale alert is generated because of a conviction for a methamphetamine-related offense and that the person to whom the stop order applies may contact the MSP if he or she believes that the information reported to NADDI is erroneous.

A person who sells ephedrine or pseudoephedrine at retail may rely on information provided by the MSP to NADDI under the Act for enforcing a stop-sale alert based upon a report of a conviction for a methamphetamine-related offense. Except as provided below, a retailer is immune from civil liability for the reliance upon and use of that information.

A person may not intentionally disclose to any person any information that he or she knows is provided under the Act, except as authorized under it. A violation of this provision is a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.

Information provided under the Act and entered in NPLeX is not subject to disclosure under the Freedom of Information Act.

MSP & NADDI Immunity

The MSP and NADDI are immune from civil liability for compiling, maintaining, or reporting methamphetamine-related offense information under the Act.

Senate Bill 756

Stop-Sale Alert Notification

The Public Health Code requires a retailer to submit certain information electronically to NPLeX before completing a sale of a product that contains 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.

Previously, the Code required the NPLeX system to be capable of generating a stop-sale alert notifying the retailer that completing the sale would result in the seller's or purchaser's violating the quantity limits set forth in Section 17766f. The bill requires the system to be capable of generating a stop-sale alert providing that notice or notifying the retailer that the person is prohibited from purchasing a nonprescription product containing ephedrine or pseudoephedrine due to a conviction reported under the Methamphetamine Abuse Reporting Act.

Sale to Person Subject to Stop-Sale Alert

Under the Code, a person who possesses products that contain any compound, mixture, or preparation described above may not knowingly do any of the following:

- Sell any such product to an individual under 18 years of age.
- Sell more than 3.6 grams of ephedrine or pseudoephedrine alone or in a mixture to any individual on any single calendar day.
- Sell more than nine grams of ephedrine or pseudoephedrine alone or in a mixture to any individual within a 30-day period.
- Sell in a single over-the-counter sale more than two personal convenience packages containing two tablets or capsules each of any those products.

The bill also prohibits the sale of any such product to an individual during the period in which a stop-sale alert is generated for that person based on criminal history record information provided under the Methamphetamine Abuse Reporting Act.

The bill requires the NPLeX system to contain an override function that may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if he or she does not complete a sale. Each instance in which the override function was used must be logged by the system.

A person who violates any of the prohibitions described above is responsible for a State civil infraction and may be ordered to pay a maximum civil fine of \$500 for each violation.

MCL 28.121-28.128 (S.B. 535)
333.7340a & 333.17766f (S.B. 756)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 535

The bill will have a minimal fiscal impact on the Department of State Police. To satisfy the provisions of the bill, the Department's Criminal Justice Information Center will prepare a programming language adjustment that will allow it to collect methamphetamine-related conviction data on a daily basis for inclusion on the NPLeX database.

The misdemeanor for information disclosure will have an indeterminate, but altogether minor fiscal impact on State and local government. Local government may have a cost in overseeing the misdemeanor sentence in the municipal jail. Penal fine revenue will benefit public libraries.

Senate Bill 756

The bill may increase the number of State civil infractions committed. Fine revenue will benefit public libraries.

Fiscal Analyst: Bruce Baker
John Maxwell

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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.