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Senate Bill 535 (Substitute S-2) *(Senate-passed version)*
Senate Bill 756 (as introduced 2-5-14) *(Senate-passed version)*
Sponsor: Senator John Proos
Committee: Judiciary

Date Completed: 2-11-14

CONTENT

Senate Bill 535 (S-2) would create 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 were notified by a court that a person had been convicted of a methamphetamine-related offense.
- Require the MSP to notify NADDI if the Department corrected or updated 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 would be for the purpose of generating a stop-sale alert through NPLeX for people who had been convicted of methamphetamine-related offenses for 10 years after the conviction.
- Authorize retailers who sold 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 proposed Act, except as authorized, and make a violation a misdemeanor.

Senate Bill 756 would amend 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 was prohibited from buying a nonprescription product containing ephedrine or pseudoephedrine due to a conviction reported under the proposed Methamphetamine Abuse Reporting Act.
- Prohibit the sale of any product containing ephedrine or pseudoephedrine to a person while he or she was subject to a stop-sale alert.

The bills are tie-barred and would take effect on January 1, 2015.

Senate Bill 535 (S-2)

MSP Report to NADDI

If a court notified the MSP that a person had been convicted of a methamphetamine-related offense on or after the bill's effective date, the MSP would have to notify NADDI of the conviction. The MSP could consult with NADDI regarding the conviction information to be provided and could limit the information based upon those requirements. At a minimum, however, the MSP would have to 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 had been convicted of a methamphetamine-related offense, which could be satisfied by a statutory citation.
- A statement of the date of conviction.

The MSP also would have to notify NADDI if the Department did any of the following:

- Corrected or updated any information regarding the conviction, if that information were previously reported to NADDI.
- Determined that the conviction had been set aside or expunged.

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

The bill would define "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

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

The bill specifies that NADDI could provide a statement on NPLeX that the stop-sale alert was generated because of a conviction for a methamphetamine-related offense and that the person to whom the stop order applied could contact the MSP if he or she believed that the information reported to NADDI was erroneous.

A person who sold ephedrine or pseudoephedrine at retail could rely on information provided by the MSP to NADDI under the proposed 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 would be immune from civil liability for the reliance upon and use of that information.

A person could not intentionally disclose to any person any information that he or she knew was provided under the Act, except as authorized under it. A person who violated this

provision would be guilty of 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 would not be subject to disclosure under the Freedom of Information Act.

MSP & NADDI Immunity

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

Senate Bill 756

Stop-Sale Alert Notification

The Public Health Code requires a retailer to submit certain information electronically to NEPLEx 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.

The NPLeX system must be capable of generating a stop-sale alert notifying the retailer that completing the sale will result in the seller's or purchaser's violating the quantity limits for the sale of ephedrine or pseudoephedrine. The bill instead would require the system to be capable of generating a stop-sale alert notifying the retailer that the person was prohibited from purchasing a nonprescription product containing ephedrine or pseudoephedrine due to a conviction reported under the proposed Methamphetamine Abuse Reporting Act or that completing the sale would result in a violation of the quantity limits for the sale of ephedrine or pseudoephedrine.

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.

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

The bill also would prohibit the sale of any such product to an individual during the period in which a stop-sale alert was generated for that person based on criminal history record information provided under the proposed Methamphetamine Abuse Reporting Act. A violation would be subject to the same civil penalty.

MCL 333.7340a & 333.17766f (S.B. 756)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 535 (S-2)

The bill would 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 would prepare a programming language adjustment that would allow it to collect methamphetamine-related conviction data on a daily basis for inclusion on the NPLeX database.

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

Senate Bill 756

The bill could increase the number of State civil infractions committed. Fine revenue would 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.