

**EPHEDRINE/PSEUDOEPHEDRINE:
REVISE ALLOWABLE PURCHASE AMOUNTS**

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**House Bill 5667 (reported from committee as H-1)
Sponsor: Rep. John Kivela
Committee: Criminal Justice
Complete to 10-26-16**

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill lowers the allowable amount of ephedrine or pseudoephedrine that a person may purchase within a 30-day period and establishes a calendar year limit of no more than 61.2 grams.

FISCAL IMPACT: New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The impact on local court systems would depend on how the provisions of the bill affected caseloads and related administrative costs. Increased penal fine revenue would benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Ephedrine and pseudoephedrine, an active ingredient in over-the-counter and prescription cold and allergy medications, are an essential ingredient in the illegal manufacture of methamphetamine (also known as "meth"). Meth is easily "cooked" using either ephedrine or pseudoephedrine along with other common and easily assessable ingredients and made in either large scale or small operations, in hotel rooms and homes, in cars, and even in backyards or woods. Meth is a highly addictive drug and one that takes a physical toll on users, including increased risk for hepatitis and HIV infection and severe dental problems. However, the destructive nature of meth is not limited to negative impacts on the user.

According to information on the community impact from methamphetamine provided by Vermont's Department of Health, a meth lab hurts neighborhoods and communities, not just the individual user and family. Chemicals used in the manufacture of meth are toxic and may be dumped into streams, rivers, sewage systems, and backyards, among other places, where children and adults can become exposed to them from direct contact or indirectly such as when the toxins contaminate water sources. Vapors released during cooking can contaminate floors, walls, rugs, and furniture in residences to the point of making them uninhabitable. Volatile, flammable gases can cause explosions resulting in fires and burn injuries.

With five to six pounds of hazardous waste generated from each pound of meth produced, the health and environmental hazards become more obvious. Cleanup of contaminated sites average about \$5,000, but can reach \$15,000 or more. Treatment for a meth burn victim averages a quarter of a million dollars. Other community costs include an increase in crime and increase in orphaned and neglected children needing foster care placements.

Despite changes in law over the past decade that restrict access to and track sales of over-the-counter products containing ephedrine and pseudoephedrine, the number of meth labs in the state continue to proliferate. Rural areas are particularly hard hit.

A recent white paper by the National Association of State Controlled Substance Authorities (NASCSA), entitled the "Impact of State Laws Regulating Pseudoephedrine on Methamphetamine Production and Abuse" (April 18, 2016), sheds some light on the relationship between the ease of sales of products containing ephedrine and pseudoephedrine and the number of clandestine meth labs in a jurisdiction. Of note is the finding that greater sales of the products are associated with greater numbers of labs. As states began adopting laws to restrict allowable purchase amounts, decreases in lab incidents began to be seen.

In 2011, Michigan enacted laws to restrict purchase amounts of ephedrine and pseudoephedrine alone or in OTC cold and allergy medicines to no more than 3.6 grams per day or 9 grams per 30-day period (the same as federal limits) and to track sales using the NPLeX system, a technology capable of providing stop-sale alerts to retailers and real-time alerts to law enforcement that a person has reached the 24-hour or 30-day purchase limits. Neither federal nor Michigan law places an *annual* restriction on purchase amounts.

According to the white paper, several states have more recently adopted annual limits on ephedrine and pseudoephedrine product purchases. After Kentucky in 2012 restricted purchases to no more than 24 grams in a year, the state saw a 52 percent decrease in labs just in the first year. Tennessee saw a similar decrease in labs in the first year when it restricted purchases to 28.8 grams annually. Coupled with using the NPLeX stop-sale technology, the authors concluded "it appears that state policies that significantly restrict and enforce quantity limits by utilizing NPLeX's real-time stop sale technology block of sales are associated with significant decreases in lab incidents." Even Indiana, which adopted a more modest purchase limit of 61.2 grams per year, saw an almost one-quarter decrease in meth lab incidents in the first year after adopting the yearly limit.

Some believe Michigan should lower the allowable monthly amount on ephedrine/pseudoephedrine product purchases and also adopt a yearly limit.

THE CONTENT OF THE BILL:

House Bill 5667 amends a provision within the Public Health Code that sets daily and monthly limits on the amount of ephedrine and pseudoephedrine, contained in cold and allergy products, that a person may purchase (MCL 333.17766c).

Specifically, the bill lowers from 9 grams to 7.2 grams the amount of ephedrine or pseudoephedrine, whether alone or in a mixture, that a person may purchase within a 30-day period. The bill also prohibits the purchase of more than 61.2 grams of ephedrine or pseudoephedrine, alone or in a mixture, that a person may purchase within a single calendar year. (The daily limit is 3.6 grams; this amount will not be revised by the bill.)

Purchasing more of the substances than the daily or monthly limit allows is a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500. The bill will apply this same penalty to exceeding the yearly limit.

The bill would take effect 90 days after enactment.

BACKGROUND INFORMATION:

NPLEx. The National Precursor Log Exchange is a real-time electronic logging system used by pharmacies, retailers, and law enforcement to track sales of over-the-counter (OTC) cold and allergy medications containing ephedrine and pseudoephedrine across town, across the state, and even across the nation. The system is sponsored by the makers of such medications and provided to law enforcement agencies and state governments free of charge by the National Association of Drug Diversion Investigators (NADDI). The system blocks sales that would exceed legal limits and provides law enforcement with immediate access to transaction information when necessary.

How much is 3.6 grams of pseudoephedrine? According to Appriss, Inc. (the technology vendor providing the NPLEx system), the daily limit of *3.6 grams* is the amount found in:

- One 15-count box of a 24-hour allergy medicine (15 pills x 240 mg per pill = 3.6 grams);
- Three 10-count boxes of a 12-hour cold medicine (30x 120 mg = 3.6 grams); or,
- Six 20-count boxes of a four-six hour cold medicine (120 x 30 mg = 3.6 grams).

ARGUMENTS:

For:

Meth is destructive to both the individual user and the community. To combat the problem, states, including Michigan, have sought to block access to the key ingredient in making meth—ephedrine and pseudoephedrine. After an initial drop in meth lab incidents in 2011 (438), the year Michigan first began to limit purchases of ephedrine and pseudoephedrine in over-the-counter cold and allergy products and to utilize the NPLEx tracking system, meth lab incidents began to rise again (750 in 2014). Knowledgeable observers say more must be done. The bill aims to further stem diversion of ephedrine and pseudoephedrine to clandestine meth labs by reducing the allowable purchase amount per month of products containing those substances from 9 grams to 7.2 grams and also by establishing a yearly limit of 61.2 grams (about an 8 and ½ month supply).

The bill does not change the daily limit of 3.6 grams, which is about a two-week supply. For those with severe allergies or medical conditions that require year-round usage of products containing ephedrine or pseudoephedrine, a patient can obtain a prescription from a physician; products available only with a prescription are not subject to the purchase limit restrictions.

Indiana, one of Michigan's bordering states, has already adopted the 61.2 gram yearly standard and has seen a significant drop in the number of clandestine labs. Because NPLeX tracks an individual's purchases even in other jurisdictions, it is unlikely that individuals would travel to states that also participate in NPLeX (e.g., Ohio) to purchase additional amounts of OTC cold and allergy medications.

The bill will not stop the unlawful manufacture of meth, nor will it stop an addicted person from seeking to buy meth. It will, however, add yet another layer of enforcement to make it harder to obtain the ingredients necessary to manufacture meth; thus, the bill has the potential to reduce available supplies of meth. Reducing the number of illicit meth labs will also result in reducing societal costs related to health risks to children and others from exposure to toxic chemicals and cleaning up contaminated sites.

Response:

According to the white paper by the National Association of State Controlled Substances Authorities, lower allowable purchase amounts, especially when tracked by the NPLeX system, are an effective supply-side intervention to combat meth production. Some states have made even OTC cold and allergy medications containing ephedrine and pseudoephedrine available by prescription only and have seen decreases in meth lab incidents as a result.

However, meth use often continues even when clandestine labs are put out of business due to trafficking across state and international borders. Therefore, according to the white paper, prescription-only laws are unlikely to significantly impact availability of methamphetamine and may have unintended impacts on consumers, employers, health plans, health care providers, and even state governments if such laws result in more physician visits to obtain a prescription, increase out-of-pocket costs (e.g., copays and deductibles), and increase public and private payer costs.

Thus, state efforts may also need to focus on the "demand side," not just the supply side; for instance, making more resources available for prevention and treatment of meth addictions.

POSITIONS:

Consumers Health Products Association indicated support for the bill. (9-20-16)

Michigan Association of Health Plans indicated support for the bill. (9-20-16)

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