

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

Senate Bill 229 (Senator Stone)
 Finance

**Public Health - Ephedrine, Pseudoephedrine, or Phenylpropanolamine Purchases
 - Statewide Electronic Logbook**

This bill requires the Alcohol and Drug Abuse Administration (ADAA) to track the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

The bill takes effect July 1, 2010.

Fiscal Summary

State Effect: General fund expenditures related to contracting and in-house costs of establishing and maintaining a statewide real-time electronic logbook to track purchases increase by \$917,800 in FY 2011, which reflects the bill’s July 1, 2010 effective date. Future years reflect inflation and phase out of contractual costs. General fund revenues may increase minimally due to the bill’s monetary penalty provisions.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
GF Revenue	\$0	-	-	-	-
GF Expenditure	\$917,800	\$862,900	\$689,900	\$713,200	\$412,400
Net Effect	(\$917,800)	(\$862,900)	(\$689,900)	(\$713,200)	(\$412,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill’s monetary penalty provisions are not expected to significantly affect local finances.

Small Business Effect: Potential meaningful. Expenditures for small pharmacies increase if they are required to purchase electronic logbook software under the bill.

Analysis

Bill Summary: To purchase an ephedrine, pseudoephedrine, or phenylpropanolamine product, a person has to produce valid photo identification and sign an electronic log or receipt that shows the transaction's date, the person's name, and the amount of product purchased. Pharmacies and retailers have to maintain an electronic log of product purchases and enter transaction information into a real-time statewide electronic logbook maintained by ADAA.

The electronic logbook must be equipped to calculate both State and federal ephedrine, pseudoephedrine, or phenylpropanolamine purchase limits. Information in the logbook is confidential and not subject to the Freedom of Information Act. However, access will be granted to a person authorized to prescribe or dispense products containing ephedrine, pseudoephedrine, or phenylpropanolamine for the purpose of providing medical care or pharmaceutical care; a local, State, or federal law enforcement official or prosecutor; and, a local, State, or federal official who requests access for the purpose of facilitating product recall necessary for public health and safety protection.

ADAA can destroy a logbook transaction record within two years of its entry date unless the transaction record is being used in an ongoing criminal investigation or proceeding.

A pharmacy or retailer that violates the bill's purchasing and recording provisions is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000. In addition, any person who releases or discloses confidential information to an unauthorized person or obtains confidential information for an unauthorized purpose is guilty of a misdemeanor and on conviction is subject to a fine of up to \$10,000.

Electronic logbook establishment and maintenance is contingent on funds being included in the annual State budget for ADAA for this purpose.

Current Law: A person may not dispense a controlled dangerous substance without a written prescription from an authorized provider if the substance is listed in Schedule II, and is a drug limited to prescription use under the Health-General Article. Such a controlled dangerous substance may only be dispensed without a written prescription by an authorized provider who is not a pharmacist and who dispenses the controlled dangerous substance directly to an ultimate user. Likewise, if an emergency exists, a pharmacist can dispense the drug under the Department of Health and Mental Hygiene regulations on an oral prescription that the pharmacist reduces promptly to writing and keeps on file, but only if federal law authorizes the oral prescription.

A prescription for a controlled dangerous substance listed in Schedule II has to be kept on file in conformity with applicable requirements for records and inventories of these provisions. A person may not refill a prescription for a controlled dangerous substance listed in Schedule II.

Currently, Maryland law subjects a person convicted of manufacturing methamphetamine to maximum imprisonment of five years and subjects a person convicted of importation to a maximum of 25 years.

As of September 30, 2006, federal law requires retail stores to keep over-the-counter medications containing pseudoephedrine behind the counter or in a locked cabinet. Purchasers have to show photo identification and sign a logbook. Federal law also limits the quantities of cold medication that a consumer may purchase daily. The federal law does not preempt state laws that have stricter provisions concerning pseudoephedrine purchases or possession.

Background: Pseudoephedrine is a decongestant in several over-the-counter medications used to relieve nasal discomfort caused by colds, allergies, and hay fever. This medication is sometimes prescribed for other uses.

Pseudoephedrine is also used to make methamphetamine, a Schedule II controlled dangerous substance. A substance is listed in Schedule II if the substance includes a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system: amphetamine, its salts, optical isomers, and salts of its optical isomers; phenmetrazine and its salts; a substance that contains any methamphetamine, including salts, optical isomers, and salts of its optical isomers, in combination with one or more active nonnarcotic ingredients in recognized therapeutic amounts; methylphenidate; and methamphetamine, its salts, optical isomers, and salts of optical isomers.

Federal officials have called methamphetamine “the fastest growing drug threat in the United States.” Its popularity began 20 years ago in the Southwest and is steadily advancing across the country. Surveys of county law enforcement officials conducted by the National Association of Counties in 2005 and 2006 concluded each year that methamphetamine is the leading drug-related law enforcement problem in the country. The 2006 survey supported the assertion that the program has been advancing eastward by showing a marked increase in the methamphetamine problem in southeastern states with a smaller increase in the northeastern states. At least 39 states have passed laws establishing or enhancing restrictions on the sale of over-the-counter pseudoephedrine products.

As is true nationwide, methamphetamine users in Maryland have historically been concentrated in rural areas. The most likely users are white, working class, in their twenties or thirties, and almost as likely to be female as male. However, use among white-collar professionals and long-distance truckers is increasing.

The Maryland Board of Pharmacy repeatedly proposed a regulation requiring a pharmacy to keep single-entity pseudoephedrine products in a secured area with the prescription drugs. Pseudoephedrine would only have been dispensed to people age 18 or older with a valid government-issued driver's license or identification card that includes the date of birth. This regulation would not have applied to pseudoephedrine products dispensed with a prescription. The board withdrew the regulation in July of 2007 because of the passage of federal legislation.

According to the Board of Pharmacy, there are 1,219 pharmacies and 341 nonresident pharmacies holding Maryland permits.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase by an estimated \$902,953 in fiscal 2011 which accounts for the bill's July 1, 2010 effective date. The estimate reflects contracting costs incurred by ADAA to contract with an outside agency to develop and manage the electronic logbook system. ADAA advises that it plans to model the electronic logbook contract in part after its current State of Maryland Automated Record Tracking Application contract with the University of Maryland. The contract would include the hiring of six full-time contractors (two programmers, one system engineer, one help desk/support/tester, and two trainers) and one part-time program supervisor. Trainers and supervisors would be expected to travel to pharmacies in the State that need technical assistance. Therefore, the estimate includes travel reimbursement for trainers and the supervisor, telecommunications costs, and rental costs for all of the positions.

The estimate also reflects the costs for ADAA to hire five full-time employees in similar positions to assist contractual employees in developing and managing the electronic logbook system and then maintaining the system once the contractual employees, who will be phased out gradually beginning in fiscal 2013, have been terminated at the end of fiscal 2014. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Permanent Positions	5
Contractual Positions	6.5
Salaries and Fringe Benefits	\$772,917
Operating Expenses	53,318
Start-up Costs	<u>91,565</u>
Total FY 2011 State Expenditures	\$917,800

Future years reflect gradually decreasing contract costs through fiscal 2014 as contractors are phased out, 4.4% annual salary increases, and 1% annual increases in ongoing operating expenses.

Small Business Effect: Expenditures for small pharmacies may increase if they are required to purchase electronic logbook software under the bill. While the Board of Pharmacy advises that purchasing costs could range from \$1,000 to \$5,000 for each small pharmacy, a reliable estimate of the actual cost cannot be made at this time.

Additional Comments: Since ADAA does not have the authority to regulate pharmacies in the State, the Board of Pharmacy may have to adopt regulations addressing the use of the electronic logbook.

Additional Information

Prior Introductions: This bill is a reintroduction of SB 401 of the 2008 session. SB 401 received an unfavorable report from the Senate Finance Committee.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2009
ncs/mwc

Analysis by: Sarah K. Volker

Direct Inquiries to:
(410) 946-5510
(301) 970-5510