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FISCAL IMPACT REPORT

01/26/13
ORIGINAL DATE 02/20/13

SPONSOR HJC **LAST UPDATED** 03/13/13 **HB** CS/146/aHFI#1/aSJC

SHORT TITLE Sale of Methamphetamine Precursors **SB** _____

ANALYST Weber/Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal (See Fiscal Impact)				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment #1

The Senate Judiciary Committee Amendment to House Judiciary Committee Substitute for House Bill 146 provides if a retailer has not violated any provision of Section 1 in a "wanton, reckless or deliberate manner" while using the real-time stop sale system, the retailer shall not be civilly liable.

Synopsis of HFL Amendment #1

1. On page 4, line 19, strike the first "a".
2. On page 4, line 19, strike "by a" and on line 20, strike "fine of no more than" and insert in lieu thereof ", notwithstanding the provisions of Section 31-19-1 NMSA 1978, by a fine of up to".

3. On page 5, strike lines 2 and 3 in their entirety and strike line 4 through "section", and insert in lieu thereof:

"M. The board of pharmacy shall oversee the real-time stop sale system and enforce the provisions of this section in accordance with an implementation plan approved by the department of information technology pursuant to the Department of Information Technology Act".

3. eliminates various criteria to which the “stop sale” system must adhere and defaults to the Department of Information Technology Act.

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 146 restricts the per-person purchase amount of non-prescription ephedrine and pseudoephedrine to no more than 3.6 grams per day or no more than 9 grams per thirty day period. Nonprescription products containing pseudoephedrine or ephedrine shall be kept behind the retailers counter. The purchaser shall present government-issued photo idea at the point of sale, and the retailer shall record the purchaser’s name and address; name and quantity of product purchased; date and time purchased; and a purchaser identification number, such as from a driver’s license. The purchaser shall also sign a paper or electronic logbook.

The bill also implements a “real-time stop sale system” administered by the board of pharmacy, which is to be available to retailers free of charge beginning January 1, 2014. The retailer will submit all of the information gathered at the point of sale through the stop sale system, and the retailer will not complete the sale if the system responds with a stop sale alert, indicating the purchaser has exceeded the quantity limits set forth in this bill. An override function will be available if the retailer feels an imminent threat of bodily harm if the sale is not completed.

A retailer may request an exemption from electronic reporting from the board of pharmacy if the retailer lacks the technology to access the real-time stop sale system and maintains a sales volume of less than seventy-two grams of pseudoephedrine, ephedrine or related compounds in a thirty-day period.

A person who violates the purchase limitations is guilty of a misdemeanor and shall be punished by a fine of no more than one thousand dollars.

FISCAL IMPLICATIONS

The bill requires that by January 1, 2014 a retailer has in place a real-time stop sale system. The system is to be administered by the Board of Pharmacy and if implemented must be free of charge to the retailer. RLD reports the system is already available free of charge for those states mandating such a system. However, even with the system there may be costs associated with keeping logs when necessary and forwarding the logs weekly to the “appropriate state agency”. In addition, law enforcement must have access the information must be made available to law enforcement with resultant costs related to investigations of possible violations.

AOC anticipates only minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws,

amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

TECHNICAL ISSUES

It is not clear which state agency is “the appropriate state agency” other than the pharmacy board. Also, AGO notes that State laws regarding sale of pseudoephedrine may have been preempted by federal law, Combat Methamphetamine Epidemic Act of 2005 (effective March 2006)

PDD recommends consideration of an amendment to clarify whether this is a special penalty misdemeanor with only a \$1000 maximum fine, as the language suggests, or whether, in addition, a defendant would be subjected to a definite jail term of less than one year, as set forth in the sentencing statute for misdemeanors, NMSA 1978, Section 31-19-1.

MW/svb:blm