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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/2006
 LAST UPDATED 2/1/2006 HB 211/aHBIC

SPONSOR Heaton

SHORT TITLE Pseudophedrine as a Controlled Substance SB _____

ANALYST McSherry

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
(\$2.0)	(\$18.0)	(\$2.0)	Recurring	Pharmacy Board

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 179 “Methamphetamine Trafficking Penalties” and SB 195 “Prison Time for Methamphetamine Manufacture”

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Health (DOH)
 Board of Pharmacy (BOP)

SUMMARY

Synopsis of HBIC Amendments

The House Business and Industry Committee amendments make the requirements for a customer to sign a log, with information including driver’s license number, produce photo identification, and be limited to 9 grams of the substance only pertain to customers without a valid prescription.

The amendment also provides for the Board of Pharmacy to “monitor prices charged for compounds, mixtures and preparations that contain pseudophedrine” and to adopt rules to prevent “unwarranted price increases” resulting from the substance’s regulation.

Synopsis of Original Bill

House Bill 211 proposes to add pseudoephedrine to the Controlled Substances Act.

The bill would:

- Allow non-narcotic substances to be controlled under the Controlled Substances Act
- Require that any compound, mixture or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, only be dispensed by a licensed pharmacist including pseudoephedrine.
- Require a purchaser to show photo ID, including birth date, and sign a log or receipt showing the date, name, diver's license number, name of the pharmacist/pharmacist intern/pharmacist tech and the amount of the compound (as amended only customers without a valid prescription would be subject to these requirements).
- Limits a person to no more than nine grams of the compound within a thirty-day period, provided that the compound is not dispensed pursuant to a valid prescription.
- Allow removal of a product containing pseudoephedrine from Controlled Substances act restrictions if the board determines that the product cannot be converted into methamphetamine.

FISCAL IMPLICATIONS

The Pharmacy Board reports that it would lose approximately \$2-18 thousand in recurring revenues from the licensure of the sellers of pseudoephedrine products; these licensures would have to be discontinued should product sales be restricted to pharmacies.

SIGNIFICANT ISSUES

The Public Defender (PD) cites Ephedrine, which could be simply be derived from pseudoephedrine, as a necessary precursor to methamphetamine, a Schedule I controlled substance. Retail outlets selling psuedoephedrine are thought to be the source for the precursors of most methamphetamine used in the United States.

PD further cites that Sudafed, a typical over-the-counter/nonprescription pseudoephedrine brand, has a dosage of one or two 30 mg. tablets per four to six hour period. This bill would permit possession of 300 Sudafed tablets monthly (9 grams = 9,000 milligrams ÷ 30 mg. = 300 tablets), which would be enough to treat most allergy symptoms. A New Mexican with a prescription under the proposed act could have all the pseudoephedrine his/her physician prescribed.

According to the Board of Pharmacy, (BOP) the illicit use of pseudoephedrine products in the manufacture of methamphetamine is a serious problem in New Mexico. Pseudoephedrine products are currently available for the public's use in the treatment of a broad range of medical conditions/symptoms including the common cold, influenza, and seasonal allergies and are sold in numerous stores, supermarkets, pharmacies, and other businesses.

BOP asserts that restricting the sale of pseudoephedrine products and maintaining a log of all sales will reduce the ability of illicit manufacturers of methamphetamine form utilizing "smirfs" who purchase pseudoephedrine from multiple locations on a daily basis.

BOP points out that the drug manufacturing industry has converted many of the products that contained pseudophedrine by replacing it with phenylphrine (another decongestant). This bill would not restrict the sale of reformulated products and they may be offered by any business.

DOH reports that methamphetamine deaths have increased from 12 in 2002 to 21 in 2004.

PERFORMANCE IMPLICATIONS

The Public Defender predicts that, over time, enactment of the proposed bill could decrease the workload of the courts, prosecutors, and Public Defender Department by a predicted reduction in the methamphetamine problem in New Mexico, and a corresponding reduction in the criminal cases associated with it.

DOH cites that the proposed bill would support its Strategic Plan in terms of controlling inappropriate use of addictive controlled substances.

ADMINISTRATIVE IMPLICATIONS

The Pharmacy Board reports that it would be required to change current regulations concerning the sale of pseudoephedrine products and to stop licensing the retail and wholesale distributors of the products.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Legislation was passed during the 2004 legislative session authorizing the Board of Pharmacy to license the whole-salers/retailers of methamphetamine precursors (including pseudoephedrine) and to adopt regulations for the sale of those products. The Board adopted regulations that included security requirements for the drugs, training requirements for the employees, and limits on sales to any one individual. The regulations became effective January 30, 2005. These licenses would be discontinued if sales are effectively limited to licensed pharmacies.

House Bill 211 relates to House Bill 179 “Methanphetamines Trafficking Penalties” and SB 195 “Prison Time for Methamphetamine Manufacture”

TECHNICAL ISSUES

The Board of Pharmacy licenses 336 pharmacies in New Mexico. Not every city/or community in New Mexico has a pharmacy.

OTHER SUBSTANTIVE ISSUES

The Board of Pharmacy suggests the creation of a possession penalty for quantities indicative of the manufacture of methamphetamine. The bill allows for 9 grams of psuedoephedrine to be purchased every 30 days; the Board suggests quantities exceeding 18 grams should be considered possession with intent to manufacture and be a 4th degree felony.

Department of Health, points out that nationally, the number of seizures of methamphetamines increased from 3000, in 1997 to 14,000 in 2002 and that in 2003, the Youth Risk and Resiliency

Survey found that 8.2 percent of high school-aged youth in New Mexico reported using methamphetamine in the past year, up from 5.3 percent in 2001.

DOH cites potential public concern about infringement on privacy rights relating to the registration requirement included in the bill requiring a person's personal information including driver's license number or government ID number.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Board of Pharmacy would continue to regulate the sale of pseudoephedrine. Medication that can be sold without a prescription (such as pseudoephedrine) would not be covered by the Controlled Substances Act and would be available for purchase in facilities other than pharmacies.

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