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FISCAL IMPACT REPORT

SPONSOR Heaton DATE TYPED 03/01/05 HB 825

SHORT TITLE Psuedoephedrine as a Controlled Substance SB _____

ANALYST McSherry

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
NFI	(\$75.0)	(\$75.0)	Recurring	Pharmacy Board Fund

(Parenthesis () Indicate Revenue Decreases)

House Bill 825 relates to SB413 Amend drug, device & cosmetic and pharmacy acts and HB110 Methamphetamine Offences Revision.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
Regulations and Licensing Department (RLD)
Public Defender (PD)
Administrative Office of the Courts (AOC)
Economic Development Department (EDD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 825 proposes to add pseudoephedrine to the Controlled Substances Act.

The bill would:

Delete a clause that excludes non-narcotic substances from control by the Act if they can be lawfully sold over the counter without a prescription.

Provide language specifying that any compound, mixture or preparation that contains any detectable quantity of pseudoephedrine, its salts or its optical isomers, can only be dispensed by a licensed pharmacist including pseudoephedrine.

Add language requiring that a person purchasing such a compound show photo ID, including birth date, and sign a log or receipt showing the date of the transaction, the person's name, and the amount of the compound.

Provide that a person would be limited 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 board of pharmacy, by rule, to remove a product containing pseudoephedrine from the said restrictions if the board determines that the product cannot be converted into methamphetamine.

Significant Issues

According to the Public Defender (PD), Ephedrine, which could be simply be derived from pseudoephedrine, is a necessary precursor to methamphetamine, a Schedule I controlled substance and retail outlets selling pseudoephedrine 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, 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.

The Board of Pharmacy (BoP) reports that it is currently in the process of licensing all retail sellers of pseudoephedrine products and restricting the sale of pseudoephedrine products to two blister packages/or 6 grams of pseudoephedrine to any one individual during a 7 day period; products must also be within 20 feet of sight line of pharmacy or behind sales counter or locked. The board reports that this rule went into effect on January 30th of 2005.

BoP points out that the placement of pseudoephedrine products in schedule V would effectively restrict the availability of those products to only through a licensed pharmacy and that the proposed provision is similar to the Oklahoma law enacted last year only allowing the sale of those products through licensed pharmacies.

Under the proposed bill's provisions, communities without pharmacies, or communities without 24-hour pharmacies when the pharmacy is closed, would not be able to purchase pseudoephedrine products.

The AG points out that current statute disallows Pharmacy Board from making any over-the-counter drug a scheduled or controlled substance, and asserts that this restriction would not allow the Pharmacy Board the ability to control drug precursors satisfactorily.

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.

FISCAL IMPLICATIONS

The Pharmacy Board reports that it would lose approximately \$75,000 in recurring revenues from the licensure of the sellers of pseudoephedrine products.

ADMINISTRATIVE IMPLICATIONS

Monitoring adherence to the proposed controls would be required. Because pseudoephedrine is sold widely in a number of retail outlets including pharmacies, convenience stores, grocery stores, mass merchandisers, ec, monitoring could require a substantial workload.

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.

The Board of Pharmacy supports the proposed elimination of the language in NMSA 30-31-3E, the provision prohibiting the Board from scheduling a drug as a controlled substance if it is available in over the counter preparations. This amendment would allow the Board, if necessary to protect the public health, to place drugs like ephedrine and pseudoephedrine in schedule 5 of the controlled substance act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Legislation was passed during last year authorizing the Board of Pharmacy to license the wholesalers/retailers of methamphetamine precursors (including pseudoephedrine) and to adopt regulations for the sale of those products. The Board did adopt regulations that 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. The Board would like to monitor the effectiveness of these new measures to combat the methamphetamine problem during the next year in order to determine if any further measures should be taken. The current law allows the Board by rule to enact further restrictions if necessary to curb the illicit production of methamphetamine.

House Bill 825 relates to HB 110 which proposes to add Methamphetamine, its salts, isomers, and salts of isomers to the substances prohibited by the Trafficking in Controlled Substances Act.

TECHNICAL ISSUES

The Board of Pharmacy licenses approximately 400 pharmacies in New Mexico. Not every city/or community in New Mexico has a pharmacy.

OTHER SUBSTANTIVE ISSUES

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 2001, the DOH Office of Epidemiology reported that five percent of youth in grades 9-12 were using methamphetamines. The report further cited that 40 percent of referrals to treatment for methamphetamines were from the criminal justice system.

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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