



Senate Fiscal Agency
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Senate Bill 1282 (as enrolled)
House Bill 5822 (as enrolled)
Sponsor: Senator Jud Gilbert, II (S.B. 1282)
Representative Rick Jones (H.B. 5822)
Senate Committee: Judiciary (S.B. 1282)
Health Policy (H.B. 5822)
House Committee: Judiciary (S.B. 1282)
Health Policy (H.B. 5822)

PUBLIC ACT 259 of 2006
PUBLIC ACT 261 of 2006

Date Completed: 8-16-06

RATIONALE

The use and production of methamphetamine ("meth") have been a growing problem in the State—particularly in southwestern Michigan—since the 1990s. Methamphetamine is manufactured with common chemicals and household items in clandestine laboratories. Although there are several production methods, meth labs discovered in Michigan typically have used a manufacturing process that involves the extraction of pseudoephedrine or ephedrine from cold tablets, according to the Office of Drug Control Policy in the Michigan Department of Community Health.

Legislation enacted in recent years has taken various approaches to combat the use and production of meth. The legislation includes measures to restrict over-the-counter (OTC) sales of products containing ephedrine and pseudoephedrine to people at least 18 years old, and to require retailers to monitor the products and keep records of purchases. In order to enhance restrictions on access to a key ingredient in the meth manufacturing process, it was suggested that internet and mail-order sales of ephedrine and pseudoephedrine products should be prohibited.

CONTENT

House Bill 5822 amends the Public Health Code to make it a felony to sell or distribute a product containing ephedrine or pseudoephedrine through the mail, internet, telephone, or other

electronic means, subject to certain exceptions.

Senate Bill 1282 amends the Code of Criminal Procedure to include in the sentencing guidelines the sale, distribution, or delivery of a product containing ephedrine or pseudoephedrine by mail, internet, or telephone.

The bills will take effect on October 1, 2006, and were tie-barred to each other.

House Bill 5822

The bill prohibits a person from selling, distributing, delivering, or otherwise furnishing a product that contains any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine, to an individual if the sale is transacted through use of the mail, internet, telephone, or other electronic means.

A person who violates the prohibition will be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$5,000.

The bill does not apply to a person who, in the course of his or her business, sells or distributes products described above to

either a person licensed by the State to manufacture, deliver, dispense, or possess with intent to manufacture or deliver a controlled substance, prescription drug, or other drug; or a person who orders those products for retail sale pursuant to a license issued under the General Sales Tax Act.

The bill also does not apply to any of the following:

- A pediatric product intended primarily for administration to children under age 12, according to label instructions.
- A product containing pseudoephedrine in a liquid form if pseudoephedrine is not the only active ingredient.
- A product that the State Board of Pharmacy, upon application of the manufacturer or certification by the United States Drug Enforcement Administration as inconvertible, exempts from the bill because the product has been formulated in a way that effectively prevents the conversion of the active ingredient into methamphetamine.
- A person who dispenses a product specified in the bill pursuant to a prescription.

Senate Bill 1282

The bill includes in the sentencing guidelines the sale, distribution, or delivery of a product containing ephedrine or pseudoephedrine by mail, internet, or telephone. A violation is a Class F controlled substances felony with a statutory maximum sentence of four years' imprisonment.

MCL 777.13m (S.B. 1282)
333.7340 (H.B. 5822)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Although Michigan already had strong penalties for the manufacture, delivery, and possession of methamphetamine, those penalties apply only after the drug has been produced and the meth user or cooker has been caught. Public Acts 86 and 87 of 2005 were enacted to require individuals to show a driver license or State ID proving they are at least 18 in order to buy OTC ephedrine

and pseudoephedrine products, and to require retailers to monitor transactions. By restricting access to a key ingredient, Public Acts 86 and 87 took a proactive approach to thwarting the spread of methamphetamine manufacture in clandestine labs. A prohibition against and penalties for internet and mail-order sales of ephedrine and pseudoephedrine products, as House Bill 5822 and Senate Bill 1282 establish, will further restrict access to large quantities of meth ingredients, and deter the production of this drug.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of the new offense. An offender convicted of the Class F offense will receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.