

Legislative Analysis



REVISE PENALTIES FOR SMURFING

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<http://www.house.mi.gov/hfa>

Senate Bill 409 as reported by committee without amendment
Sponsor: Sen. Margaret E. O'Brien

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 410 as reported by committee without amendment
Sponsor: Sen. Tom Casperson

House Committee: Criminal Justice
Senate Committee: Judiciary
Complete to 2-24-16

SUMMARY:

Senate Bill 409 would add a criminal penalty for *attempting* to solicit another person to purchase ephedrine or pseudoephedrine knowing that it is to be used to manufacture methamphetamine or "meth." Senate Bill 410 would make a technical revision in the sentencing guidelines for soliciting a person to purchase or obtain ephedrine or pseudoephedrine to manufacture methamphetamine. The bills would take effect 90 days after enactment.

Generally speaking, "smurfing" refers to the practice by criminal enterprises of making many small purchases of behind-the-counter cold and allergy medications containing ephedrine and pseudoephedrine from numerous retailers, as well as using others to make such purchases, in order to make methamphetamine or "meth."

Senate Bill 409 amends the Public Health Code (MCL 333.7340c). Currently, it is a felony to solicit another person to purchase or otherwise obtain any amount of ephedrine or pseudoephedrine knowing that it is to be used for the purpose of illegally manufacturing methamphetamine.

Under the bill, a person who *attempted* to violate the above prohibition would be guilty of a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000.

Senate Bill 410 amends the sentencing guidelines portion of the Code of Criminal Procedure to make a technical change to clarify that the reference to soliciting another person to purchase or obtain ephedrine or pseudoephedrine to manufacture meth pertains to the felony violation and not the violation of attempting to do the same added by Senate Bill 409, which is a misdemeanor (MCL 777.13m). The bill is tie-barred to Senate Bill 409 or House Bill 4767.

BRIEF DISCUSSION OF THE BILLS:

The bills are identical to House Bills 4767 and 4768; those bills have passed the House and are pending Senate committee action. The bills were part of a package that also includes House Bills 4864 and 4769. A full analysis can be found at:

[http://www.legislature.mi.gov/\(S\(o4vjvk3rnuyd55aueun00rcz\)\)/mileg.aspx?page=getObject&objectName=2015-HB-4767](http://www.legislature.mi.gov/(S(o4vjvk3rnuyd55aueun00rcz))/mileg.aspx?page=getObject&objectName=2015-HB-4767)

Senate Bills 409 and 410 are intended to give prosecutors another tool when prosecuting smurfing cases. Smurfing refers to the practice of buying large quantities of cold medicines containing ephedrine or pseudoephedrine, primary ingredients in the illegal manufacture of methamphetamine, or meth. A 2014 bill package, which focused on reducing access to products containing ephedrine or pseudoephedrine, made it a felony to solicit another to purchase or obtain any amount of those substances knowing or having reason to know that the substance would be used to manufacture meth.

However, some feel that the felony penalty is too harsh for all situations. It has been suggested that creating a misdemeanor penalty for "attempting" to solicit another to "smurf" would provide prosecutors with greater flexibility when fitting a set of facts to a specific criminal charge. For example, it could give prosecutors an additional option in plea deals or charging decisions that could keep some first-time offenders who made a huge mistake from having a felony record.

FISCAL IMPACT:

Senate Bill 409: To the extent that the bill results in a greater number of convictions, it would increase costs on local correctional systems. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

Senate Bill 410: In amending the sentencing guidelines, the bill does not have a direct fiscal impact on state or local units of government.

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