

SMURFING: PROHIBIT SOLICITING ANOTHER TO BUY EPHEDRINE & PSEUDOEPHEDRINE

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House Bills 4767, 4768, and 4864 as introduced

Sponsor: Rep. John Kivela

Committee: Criminal Justice

Complete to 10-5-15

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

SUMMARY:

As a package, the bills:

- 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" (House Bill 4767).
- Make a technical correction in the sentencing guidelines for soliciting a person to do the above (House Bill 4768).
- Require the NPLeX system to generate a stop-sale alert for a period of five years for a person convicted of attempting to solicit a person to purchase ephedrine or pseudoephedrine for the purpose of manufacturing meth (House Bill 4864).
- 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—and using others to make such purchases—in order to make methamphetamine or "meth."

Anti-smurfing legislation enacted in 2014 beefed up the state's prohibitions on the manufacture, sale, and possession of methamphetamine by making it against the law to purchase or possess any amount of ephedrine or pseudoephedrine knowing or having reason to know that it is to be used to manufacture meth, and also to make it against the law to solicit another person to purchase or otherwise obtain any amount of ephedrine or pseudoephedrine knowing that it is to be used for purpose of illegally manufacturing meth.

The 2014 bill package also made changes to the system used by law enforcement and retailers to monitor the purchases of products containing ephedrine and pseudoephedrine; the system blocks sales that would exceed legal limits, generates a "stop sale" alert if a customer is prohibited due to a previous meth-related conviction from buying a product containing ephedrine or pseudoephedrine, and provides law enforcement with immediate access to transaction information.

House Bill 4767 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.

House Bill 4768 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 House Bill 4767, which is a misdemeanor (MCL 777.13m). The bill is tie-barred to House Bill 4767.

House Bill 4864 amends the Methamphetamine Abuse Reporting Act (MCL 28.124). The Act requires a stop-sale alert through NPLeX to be generated for individuals convicted of meth-related offenses for a period of ten years following the conviction. The bill would require a stop-sale alert for a period of five years following a conviction under House Bill 4767 for attempting to solicit another to purchase or obtain any amount of ephedrine or pseudoephedrine knowing that it will be used for the purpose of illegally manufacturing methamphetamine. The bill is tie-barred to House Bill 4767.

[The National Precursor Log Exchange (NPLeX) is a real-time electronic logging system used by pharmacies and law enforcement to track sales of over-the-counter cold and allergy medications containing ephedrine and pseudoephedrine. The system is sponsored by the makers of such medications and provided to law enforcement agencies and state governments free of charge by the National Association of Drug Diversion Investigators (NADDI). The system blocks sales that would exceed legal limits and provides law enforcement with immediate access to transaction information when necessary.

A retailer – before completing a sale under Section 17766f of the Public Health Code – must electronically submit the required information to NPLeX. If the system generates a "stop-sale" alert, the retailer is prohibited from completing the sale. A violation is a state civil infraction that may result in a fine of \$500 for each violation.

Section 17766f limits the sale of ephedrine and pseudoephedrine to no more than 3.6 grams per individual per day or more than 9 grams per individual for any 30-day period.]

BACKGROUND INFORMATION

How much is 3.6 grams of pseudoephedrine? According to Appriss, Inc., 3.6 grams is the amount found in:

- One 15-count box of a 24-hour allergy medicine (15 pills x 240 mg per pill = 3.6 grams);
- Three 10-count boxes of a 12-hour cold medicine (30x 120 mg = 3.6 grams); or
- Six 20-count boxes of a four-six hour cold medicine (120 x 30 mg = 3.6 grams).

Meth is a highly addictive and extremely physically destructive drug. The production of meth results in toxic chemicals being released into the surrounding environment and often results in explosions that level buildings, result in raging fires and/or kill and injure people, including young children. The unlawful manufacture of meth continues to increase in the state, and is especially troublesome in western Michigan. Meth is easy to make with commonly available ingredients. Meth cannot be made without either ephedrine or pseudoephedrine.

FISCAL IMPACT:

House Bill 4767: 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.

House Bill 4768: In amending the sentencing guidelines, the bill does not have a direct fiscal impact on state or local units of government.

House Bill 4864: The bill would not have a significant fiscal impact on the Department of State Police (MSP).

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.