Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 334 of the 129th G.A. **Date**: April 5, 2012

Status: As Reported by House Health & Aging **Sponsor**: Reps. Johnson and Bubp

Local Impact Statement Procedure Required: No

Contents: Pseudoephedrine and ephedrine product sales tracking

State Fiscal Highlights

- If the Office of the Attorney General chooses to enter into a contract or memorandum of understanding with the administrator of the National Precursor Log Exchange (NPLEx), as permitted by the bill, the likely administrative cost will be minimal annually. Such a tool could make investigations of methamphetamine use, production, and trafficking easier to perform.

Local Fiscal Highlights

- Violations of the bill's two new criminal prohibitions related to the sale of pseudoephedrine and ephedrine will generate additional work and related costs for local criminal justice systems (law enforcement agencies, municipal/county prosecutors, municipal and county courts, and sanctioning). However, any increase in costs is likely to be minimal annually, as it seems reasonable to conclude that retailers and terminal distributors will largely comply with the bill's requirements and there will be relatively few violations.

Detailed Fiscal Analysis

The bill modifies current law related to the regulation of pseudoephedrine and ephedrine sales. Many of these changes mirror requirements already set in place by federal law, specifically the Combat Methamphetamine Epidemic Act of 2005. The bill also requires that retailers and terminal distributors of dangerous drugs participate in the electronic tracking of these types of drugs if the system is made free to them to use.

National Precursor Log Exchange

The bill permits the Office of the Attorney General to enter into a contract or memorandum of understanding with the National Association of Drug Diversion Investigators or its designee to provide access to the National Precursor Log Exchange (NPLEx). NPLEx is a "public/private partnership offering a real-time electronic methamphetamine precursor tracking service, free of charge, to law enforcement and state governments."[1] Funding for the system is provided by drug manufacturers.

According to staff of the Attorney General, the likely administrative cost to enter into such a contract or memorandum of understanding will be minimal annually. Once the contract is activated, the Attorney General will have access to the database, receive weekly reports, and have the ability to disseminate the information to state and local law enforcement officers. Such a tool could make investigations of methamphetamine use, production, and trafficking easier to perform.

Beginning January 12, 2012, once the NPLEx is active for Ohio, retailers are mandated to participate in the program (this requirement ends if the system ceases to be offered free of charge). In practice, this system will likely replace the paper log books that currently track pseudoephedrine and ephedrine sales, thus perhaps creating efficiencies for retailers. The bill stipulates that retailers are only mandated to use the system for as long as it is offered free of charge, including obtaining access to the exchange, submitting information to the exchange, or receiving stop-sale alerts from the exchange. Retailers and terminal distributors are also not required to participate if the equipment or software needed to use the exchange is not technologically capable of interfacing with the existing systems that are already in place, or will be in place at some point in the future.

Regulation of pseudoephedrine and ephedrine

The bill modifies current law related to the sale of pseudoephedrine. Many of these changes mirror requirements in federal law, specifically the Combat Methamphetamine Epidemic Act of 2005. Since this federal law is already in place and states are expected to abide by it, there would be no direct fiscal effect related to these

[1] "Frequently Asked Questions," *Nplexservice.com*, n.p., n.d., Web, January 19, 2012.

changes, which can be viewed as codifying current practice. These changes include the inclusion of "ephedrine" in the statute as well as the daily and monthly limits for sales.

Criminal provisions

The bill prohibits a retailer or terminal distributor from failing to comply with the information submission requirements regarding the NPLEx. A violation of this prohibition is a misdemeanor for which the offender is to be fined not more than $1,000 per violation. As the misdemeanor is unclassified, a violation does not carry the possibility of a jail term.

The bill also prohibits a retailer or terminal distributor from failing to comply with the bill's stop-sale[2] provisions. A violation of this prohibition is a second degree misdemeanor. Under current law, a second degree misdemeanor carries a possible jail term of up to 90 days and a maximum fine of $750.

It seems reasonable to assume that retailers and terminal distributors will largely comply with the bill's requirements, which means that there will be relatively few violations. Thus, to the degree that the bill has a fiscal effect on local criminal justice systems (law enforcement agencies, municipal/county prosecutors, municipal and county courts, and sanctioning), it might be in terms of a minimal increase in criminal cases and related annual operating costs.

Qualified immunity

The bill provides that a retailer or terminal distributor of dangerous drugs is not liable in damages in a civil action for injury, death, or loss to person or property resulting from any act or omission in carrying out the duties regarding over-the-counter pseudoephedrine and ephedrine product sales, unless the act or omission is reckless or constitutes willful or wanton misconduct. As a result of this provision, there may be fewer civil cases filed annually in local courts (jurisdiction depends on the amount of damages alleged by the aggrieved). An additional possibility is that, if filed, such civil actions may be resolved more promptly than might otherwise have been the case under current law and practice. Either outcome would generate some form of operational savings realized in various involved courts resulting from a decrease in judicial dockets and in the related workload of other court personnel.

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[2] A stop-sale alert is defined as a notification sent from the NPLEx to the retailer or terminal distributor of dangerous drugs indicating that the completion of a sale would result in a violation of the daily and/or monthly limits as indicated in state and federal law.