



S.B. 53

126th General Assembly
(As Introduced)

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BILL SUMMARY

- Governs the purchase and sale of pseudoephedrine products in Ohio.
- Requires retailers and terminal distributors of dangerous drugs to follow certain procedures with regard to over-the-counter sales of pseudoephedrine products.
- Provides that the Hazardous Waste Clean-up Fund may be used to address contamination caused by the operation of an illegal methamphetamine laboratory.

CONTENT AND OPERATION

Background

Pseudoephedrine, a decongestant, is a common ingredient in over-the-counter medications used to alleviate sinus and nasal congestion associated with colds, allergies, and hay fever.¹ However, pseudoephedrine can also be used in the illegal manufacture of methamphetamine. According to the United States Drug Enforcement Agency, "the diversion of over-the-counter pseudoephedrine products is one of the major contributing factors to the methamphetamine situation in the United States." The DEA has documented that much of the pseudoephedrine found in clandestine methamphetamine laboratories is acquired through retail purchase of large amounts of over-the-counter pseudoephedrine products.²

¹ *MedlinePlus Drug Information, www.nlm.nih.gov/medlineplus, visited 2-17-05.*

² *<http://www.deadiversion.usdoj.gov>, visited 2-17-05.*

Retail sale of pseudoephedrine products in Ohio

(secs. 2927.30 and 3719.47)

As used in the bill, a "pseudoephedrine product" is a consumer product consisting of a single-ingredient preparation of pseudoephedrine.³ The bill creates guidelines to govern the retail sale of pseudoephedrine products by retailers and terminal distributors of dangerous drugs.⁴

Guidelines

Retailers and terminal distributors

(sec. 3719.47(B))

The bill requires retailers and terminal distributors that sell, offer to sell, hold for sale, deliver, or otherwise provide pseudoephedrine products to the public to do all of the following:

- (1) Segregate pseudoephedrine products from other merchandise so that no member of the public may procure or purchase pseudoephedrine products without the direct assistance of a pharmacist or other authorized employee of the retailer or terminal distributor;
- (2) Each time a pseudoephedrine product is sold or otherwise provided:

³ The bill defines "pseudoephedrine" as any material, compound, mixture, or preparation that contains any quantity of pseudoephedrine, any of its salts, optical isomers, or salts of optical isomers. "Consumer product" includes "any food or drink that is consumed or used by humans and any drug, including a drug that may be provided legally only pursuant to a prescription, that is intended to be used or consumed by humans." "Single-ingredient preparation" means a compound, mixture, preparation, or substance that contains a single active ingredient. (Secs. 2927.30(A) and 3719.47(A).)

⁴ The bill defines "retailer" as a place of business that offers consumer products for sale to the general public. "Terminal distributor of dangerous drugs" includes any person authorized by the State Board of Pharmacy under the pharmacist licensing law (R.C. Chapter 4729.) to engage in the sale of dangerous drugs at retail (sec. 4729.01, not in the bill).

(a) Determine, by examination of a valid proof of age, that the purchaser or recipient is at least 18 years old;⁵

(b) Make a reasonable attempt to ensure that no individual purchases or receives more than the lesser of two product units or six grams of pseudoephedrine products within a 30-day period.⁶

Pseudoephedrine sales records subject to inspection

(sec. 3719.47(F))

The bill requires that prescriptions, orders, and records regarding pseudoephedrine product sales maintained by a retailer or terminal distributor be open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy, whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. Prescriptions, orders, and stocks must also be open for inspection by the State Medical Board and its employees for purposes of enforcing Ohio's physician licensing law (R.C. Chapter 4731.). The bill specifies generally that no person having knowledge of any prescription, order, or record regarding pseudoephedrine sales may divulge that knowledge. The exception is that knowledge may be divulged in connection with a prosecution or proceeding in court or before a licensing board or officer if the person to whom the prescriptions, orders, or records relate is a party to the prosecution or proceeding.

Prohibitions

While the bill creates certain prohibitions regarding retail sales and purchases of pseudoephedrine products, it does not proscribe a penalty for an individual, retailer, or terminal distributor who violates these prohibitions.

⁵ Under the bill, "proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued by the state that shows a person is 18 years of age or older (sec. 3719.47(A)).

⁶ The federal Methamphetamine Anti-Proliferation Act (MAPA), enacted in 2001, limits the amount of pseudoephedrine an individual may purchase in a single sales transaction to not more than nine grams of pseudoephedrine. (Please see **COMMENT.**)

Prohibitions for retailers and terminal distributors

(secs. 2927.30(C), (D), and (E) and 3719.47(C), (D), and (E))

The bill provides that no retailer or terminal distributor may knowingly sell, offer to sell, hold for sale, deliver, or otherwise provide to any individual an amount of pseudoephedrine product that is greater than the lesser of two packages or six grams within a 30-day period. The bill specifies that this prohibition does not apply to any quantity of pseudoephedrine product dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health professional who is authorized to prescribe drugs.⁷

The bill specifies that no employee of a retailer or terminal distributor who is under age 18 may sell, hold for sale, deliver, or otherwise provide any pseudoephedrine product to any individual. Further, no retailer and terminal distributor may sell, hold for sale, deliver, or otherwise provide any pseudoephedrine product to any individual under age 18. However, the bill authorizes the following individuals to provide a pseudoephedrine product to an individual under age 18:

(1) A licensed health care professional authorized to prescribe drugs or a pharmacist who dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under age 18;

(2) A parent or guardian of an individual under age 18 who provides a pseudoephedrine product to the individual;

(3) A person who, as authorized by the individual's parent or guardian, dispenses, sells, or otherwise provides a pseudoephedrine product to an individual under age 18.

Prohibitions for individuals who purchase pseudoephedrine products

(sec. 2927.30(B))

Under the bill, no individual may purchase, receive, or otherwise acquire more than six grams of any pseudoephedrine product within a 30-day period unless dispensed by a pharmacist pursuant to a valid prescription issued by a licensed health care professional who is authorized to prescribe drugs.

⁷ Under the Revised Code, the following licensed health professionals are authorized to prescribe drugs: dentists, advanced practice nurses, and optometrists with prescribing authorization, physicians, and veterinarians.

Pharmacy Board may exempt certain pseudoephedrine products

(sec. 3719.47(G))

Under the bill, the State Board of Pharmacy may exempt certain pseudoephedrine products from the bill's prohibitions for retailers and terminal distributors and its provisions governing pseudoephedrine product sales.⁸ The bill authorizes the Board to exempt, by rule, any pseudoephedrine products the Board finds are not used in the illegal manufacture of methamphetamine. The Board may also exempt a pseudoephedrine product that the Board determines to be formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

Hazardous Waste Clean-up Fund

(sec. 3734.28)

Current law requires the Ohio Environmental Protection Agency (OEPA) to utilize the Hazardous Waste Clean-up Fund to clean sites contaminated by hazardous wastes and to oversee the storage and disposal of various types of hazardous wastes. The bill authorizes the OEPA to use moneys in the Fund to investigate, mitigate, minimize, remove, or abate any contamination caused by the operation of an illegal methamphetamine manufacturing laboratory. As described in current law, an illegal methamphetamine manufacturing laboratory includes any laboratory or other premises that is used for the illegal manufacture or production of methamphetamine.

COMMENT

The Methamphetamine Anti-Proliferation Act (MAPA)

Enacted as part of the Children's Health Act of 2000 (P.L. 106-310), the federal Methamphetamine Anti-Proliferation Act (MAPA), addresses the diversion of over-the-counter pseudoephedrine products from retail and mail order sources to the illicit production of methamphetamine. The MAPA, which took effect on October 17, 2001, limits the amount of pseudoephedrine an individual may purchase in a single sales transaction to not more than nine grams. (In the case of a product containing additional ingredients, an individual cannot purchase in a

⁸ Sec. 3719.47(B), (C), (D), (E), and (F).

single transaction an amount of such a product that contains more than nine grams of pseudoephedrine.)⁹

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-09-05	p. 161

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⁹ <http://www.deadiversion.usdoj.gov>, visited 2-17-05.