

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1367-02
Bill No.: HB 441
Subject: Drugs and Controlled Substances; Law Enforcement Officers and Agencies
Type: Original
Date: February 8, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 7 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Attorney General, Office of State Courts Administrator, Department of Public Safety (DPS) - Missouri State Highway Patrol, Department of Health and Senior Services, DPS - Director's Office and Office of State Public Defender** assume the proposal would have no fiscal impact on their organizations.

Officials from the **Office of Prosecution Services** state the proposal will not have a significant direct fiscal impact on county prosecutors.

Officials from the **Department of Economic Development -Division of Professional Registration (PR)** state that having reviewed the proposal and having sought the conclusion of the appropriate boards(s), they are of the opinion that the proposal in its present form, has no fiscal impact on PR. However, should additional requirements be imposed on the Board of Pharmacy, additional expenses may be incurred by the Board of Pharmacy.

Officials from the **Department of Corrections (DOC)** stated the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 04 average of \$38.37 per inmate per day, or an annual cost of \$14,005 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender per day, or an annual cost of \$1,150 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Office of Secretary of State (SOS)** state the proposal revises laws relating to Schedule V controlled substances and the dispensing of ephedrine and pseudoephedrine. The Department of Health and Senior Services may promulgate rules to implement this legislation. These rules will be published in the Missouri Register and Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services could require as many as 30 pages in the Code of State Regulations. For any given rule, roughly one-half again as many pages are published in the Missouri Register as are published in the Code because of cost statements, fiscal notes and notices that are not published in the Code. The estimated cost of a page in the Missouri Register is \$23. The estimated cost of a page in the Code of State Regulations is \$27. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules, filed, amended, rescinded, and withdrawn. The SOS estimates the cost of the proposal to be \$1,845 [(30 pgs. X \$27) + (45 pgs. X \$23)] for FY 06.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
GENERAL REVENUE FUND			
<u>Cost - Department of Corrections</u>			
Increase in probation or incarceration costs	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

This proposal will have an impact on small business pharmacies and retail establishments that sell pseudoephedrine products.

DESCRIPTION

This proposal concerns the sale of products containing pseudoephedrine and ephedrine.

SECTION 195.017 - This proposal adds ephedrine to the list of substances included in Schedule IV. It provides that ephedrine, its salts, optical isomers and salts of optical isomers are included when the substance is the only active medicinal ingredient. A substance is placed on Schedule IV if it has a low potential for abuse relative to Schedule III substances, it has currently accepted medical use in treatment, and abuse of the substance may lead to limited physical dependence or psychological dependence relative to Schedule III substances.

This section also makes changes to the controlled substances in Schedule V. According to statute, a substance is placed in Schedule V if it has a low potential for abuse compared to Schedule IV, has currently accepted medical use in treatment, and abuse of the substance may lead to limited physical dependence or psychological dependence relative to Schedule IV substances. Substances, including any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers. However, substances in liquid or liquid-filled gel capsule form are not included.

DESCRIPTION (continued)

This section allows only a licensed pharmacist or registered technician to dispense, sell, or distribute products containing pseudoephedrine or ephedrine to a person without a prescription. These packages must be offered for sale only from behind a checkout counter where the public is not permitted. In addition, a person buying these products must be at least 18 years old.

According to this proposal, a pharmacist or technician must require a person purchasing, receiving, or acquiring these products, who is not known to him, to furnish a photo ID showing his or her date of birth.

Within 90 days of the enactment of this act, pharmacists and technicians must implement and maintain a written or electronic log of each transaction. The log must contain the name and address of the purchase, amount of the product purchased, the date of the purchase, and the name or initials of the pharmacist or technician.

Within 30 days of enactment, everyone dispensing or offering pseudoephedrine and ephedrine products for sale must ensure that all products are behind a checkout counter. In addition, all people in possession of such products, who do not have a controlled substance registration, must return the products to a manufacturer, distributor, or transfer them to an authorized controlled substance registrant. People possessing the liquid and liquid-filled gel capsule products, which are not included on the schedule, are excluded.

No one can buy more of these products than allowed by Chapter 195, RSMo.

The Department of Health and Senior Services may exempt products which it finds are not used in illegal manufacture of methamphetamine or other dangerous substances. A manufacturer can apply for removal from the schedule and the department may grant such removal if the product is formulated in such a way so to effectively prevent the conversion of the active ingredient into methamphetamine.

Any person who violates these provisions is guilty of a Class A misdemeanor.

SECTION 195.417 - This section requires that products containing pseudoephedrine be offered for sale only from behind a checkout counter where the public is not permitted and be sold only by a pharmacist or registered technician except those in liquid or liquid gel cap form.

According to this proposal, no person can sell or dispense more than the specified amount to any individual within 30 days and no purchase can purchase more than the amount specified within 30 days. This specified amount does not apply to any quantity dispensed under a valid prescription. The specified amount includes: 1) Any number of packages that contain no more than 9 grams of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, or

DESCRIPTION (continued)

phenylpropanolamine. 2) Any number of packages of said combination drug that contain no more than 9 grams of such substances. 3) Any number of package of any combination drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any number of packages of said combination drug that contain no more than 9 grams of such substances.

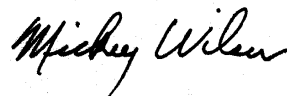
People selling or dispensing substances with pseudoephedrine or ephedrine must maintain logs, documents, and records. This does not include those selling only compounds, mixtures, or preparations in liquid or liquid-filled gel capsule form. All of these logs, documents, and records shall be open for inspection and copying by law enforcement officers.

This act has an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Office of State Courts Administrator
Department of Economic Development -
 Division of Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Public Safety -
 Director's Office
 Missouri State Highway Patrol
Office of Prosecution Services
Office of Secretary of State
Office of State Public Defender



Mickey Wilson, CPA
Director

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