

MAINE STATE LEGISLATURE

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L.D. 1601

DATE: 6.6.05

(Filing No. S-334)

HEALTH AND HUMAN SERVICES

Reported by:

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STATE OF MAINE SENATE 122ND LEGISLATURE FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 575, L.D. 1601, Bill, "An Act To Prevent the Manufacturing of Methamphetamine in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 17-A MRSA §1101, sub-§4-A is enacted to read:

4-A. "Methamphetamine precursor drug" means any drug or product possessed by a person that contains in the aggregate a quantity of more than 9 grams of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, in dry or solid nonliquid form.

Sec. 2. 17-A MRSA §1102, sub-§4, ¶D, as enacted by PL 1987, c. 747, §2, is amended to read:

D. Butyl nitrite or isobutyl nitrite; and

Sec. 3. 17-A MRSA §1102, sub-§4, ¶E is enacted to read:

E. A methamphetamine precursor drug.

Sec. 4. 17-A MRSA §1107-A, sub-§3, as enacted by PL 2003, c. 61, §7, is repealed and the following enacted in its place:

COMMITTEE AMENDMENT

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3. It is an affirmative defense to prosecution under this section that:

A. The substance possessed is industrial hemp; or

B. The substance possessed is a methamphetamine precursor drug and was possessed by the defendant for a legitimate medical purpose.

Sec. 5. 22 MRSA c. 556 is enacted to read:

CHAPTER 556

MAINE METH WATCH PROGRAM

§2351. Maine Meth Watch Program

1. Establishment; purpose. The Office of Substance Abuse shall establish the Maine Meth Watch Program to educate retailers, retail employees and the public in order to help curtail suspicious sales and the theft of methamphetamine precursor drugs as defined in Title 17-A, section 1101, subsection 4-A and to identify the location of illicit methamphetamine manufacturing.

2. Rulemaking. The Office of Substance Abuse may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 32 MRSA §13702, sub-§25-B is enacted to read:

25-B. Targeted methamphetamine precursor. "Targeted methamphetamine precursor" means any product containing any amount of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients:

A. In dry or solid nonliquid form; or

B. In liquid, liquid-filled capsule or glycerin matrix form if designation as a targeted methamphetamine precursor has been completed by rule adopted pursuant to section 13795, subsection 5, paragraph A.

Sec. 7. 32 MRSA §13795, as amended by PL 1997, c. 437, §46, is further amended to read:

§13795. Photographic proof of identification; discretion to sell or dispense; immunity

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2 **1. Photographic proof of identification.** As a precondition
to filling any prescription ~~or~~ dispensing any drug or selling
4 any targeted methamphetamine precursor, a pharmacist or person
acting at the direction of a pharmacist may demand, inspect and
6 record proof of identification, including valid photographic
identification, from any patient presenting a prescription or any
8 person acting on behalf of the patient or person purchasing a
targeted methamphetamine precursor. Valid photographic
10 identification includes but is not limited to the following:

- 12 A. A valid Maine motor vehicle operator's license;
- 14 B. A valid Maine identification card issued under Title
29-A, section 1410;
- 16 C. A valid United States passport;
- 18 D. A valid passport ~~or~~ motor vehicle operator's license of
20 another state, territory, possession or foreign country or
official identification card issued by the United States
22 Government only if it:
 - 24 (1) Contains a photograph of the ~~traveler--or--licensee~~
26 person presenting the identification;
 - 28 (2) Is encased in tamper-resistant plastic or
otherwise possesses indicia of tamper-resistance; and
 - 30 (3) Identifies the ~~traveler's--or--licensee's~~ person's
32 date of birth; or
- 34 E. Other valid, tamper-resistant, photographic
identification as provided in rules adopted by the board
pursuant to section 13722, subsection 1, paragraph A and in
36 accordance with Title 5, chapter 375.

38 **2. Refusal to fill prescription, dispense drug or sell**
targeted methamphetamine precursor; law enforcement reporting. A
40 pharmacist or person acting at the direction of a pharmacist may
exercise discretion and refuse to fill any prescription ~~or~~
42 dispense any drug or sell any targeted methamphetamine precursor
if unsatisfied as to the legitimacy or appropriateness of any
44 prescription presented, the validity of any photographic
identification or the identity of any patient presenting a
46 prescription or any person acting on behalf of the patient, or
the intention of the customer to use the drug or targeted
48 methamphetamine precursor according to the instructions for use.
A pharmacist or person acting at the direction of a pharmacist
50 may make a report to a law enforcement agency when that person

248

has reasonable cause to suspect that a prescription is not legitimate or appropriate, that a person has presented photographic identification that is not valid or that a customer has the intention to use a drug or targeted methamphetamine precursor in a manner inconsistent with the instructions for use.

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3. Immunity; presumption of good faith. A pharmacist or person acting at the direction of a pharmacist who in good faith and pursuant to subsection 2 refuses to fill any prescription, dispense any drug or sell any targeted methamphetamine precursor or who makes a report to a law enforcement agency is immune from any civil liability that might otherwise result from that action, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

4. Record keeping. With regard to purchases of targeted methamphetamine precursors, a pharmacy may keep a log of information about the purchaser, which may include name, date of birth, address and amount of targeted methamphetamine precursors purchased.

5. Rulemaking. The Director of the Office of Substance Abuse within the Department of Health and Human Services may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. If the Director of the Maine Drug Enforcement Agency within the Department of Public Safety finds that the ease of availability of liquid, liquid-filled capsule or glycerin matrix forms of products containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, referred to in this paragraph as "products," is a threat to the public health, safety and welfare, then the Director of the Maine Drug Enforcement Agency shall notify the Director of the Office of Substance Abuse. The Director of the Office of Substance Abuse shall consult with the joint standing committee of the Legislature having jurisdiction over health and human services matters, providing the reasons for undertaking rulemaking, and may, after consultation, adopt rules designating the products as targeted methamphetamine precursors pursuant to section 13702, subsection 25-B, paragraph B.

B. If the Director of the Maine Drug Enforcement Agency finds that sales of targeted methamphetamine precursors that

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are made without verifying the identity of the purchaser
pose a threat to public health, safety and welfare, then the
Director of the Maine Drug Enforcement Agency shall notify
the Director of the Office of Substance Abuse. The Director
of the Office of Substance Abuse shall consult with the
joint standing committee of the Legislature having
jurisdiction over health and human services matters,
providing the reasons for undertaking rulemaking, and may,
after consultation, adopt rules requiring a person making a
sale of a targeted methamphetamine precursor pursuant to
section 13796 to demand from the purchaser and to inspect
and record prior to the sale proof of identification,
including valid photographic identification, and to keep a
log of sales.

16 Sec. 8. 32 MRSA §13796 is enacted to read:

18 **§13796. Retail sale of targeted methamphetamine precursors**

20 **1. Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

24 **A. "Package"** means an item packaged and marked for retail
sale that is not designed to be broken down or subdivided
for the purpose of retail sale.

28 **B. "Retailer" or "retail store"** means a person or business
entity engaged in this State in the business of selling
products to the general public on a retail basis, including
drug outlets.

32 **C. "Sale" or "sold"** includes barter, exchange, transfer and
gift.

36 **2. Restrictions on packaging.** The following restrictions
apply to packaging targeted methamphetamine precursors.

38 **A.** A targeted methamphetamine precursor may not be sold in a
package containing more than 3 grams.

42 **B.** A targeted methamphetamine precursor may not be sold
unless in a blister package, each blister containing not
more than 2 average adult doses, except in single-dose
packages of not more than 60 milligrams.

46 **3. Restrictions on the sale of targeted methamphetamine**
precursors. The following restrictions on location in the retail
store, manner of sale and amount of sale apply to sales of
targeted methamphetamine precursors.

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2 A. A retailer may not sell more than 3 packages of a
4 targeted methamphetamine precursor per transaction.

6 B. Except with regard to single-dose packages of not more
8 than 60 milligrams that are kept within 30 feet and in
10 direct line of sight of a staffed cash register or store
12 counter, a retailer must keep targeted methamphetamine
14 precursors in a location that is locked or otherwise not
16 accessible by customers.

18 C. Except with regard to single-dose packages of not more
20 than 60 milligrams that are kept within 30 feet and in
22 direct line of sight of a staffed cash register or store
24 counter, the sale of targeted methamphetamine precursors
26 must be completed by:

28 (1) A licensed pharmacist or registered pharmacy
30 technician; or

32 (2) An employee of the retailer who accepts payment
34 for the targeted methamphetamine precursor as long as:

36 (a) The employee works under the direct
38 supervision of a pharmacist in the pharmacy area
40 of the retail store; and

42 (b) A licensed pharmacist or registered pharmacy
44 technician has given individual, express approval
46 for the purchase.

48 4. Exceptions. The provisions of this section do not apply
to a targeted methamphetamine precursor that is obtained by
prescription or by sale or transfer in the regular course of
lawful business to a veterinarian, physician, pharmacist, retail
distributor, wholesaler, manufacturer, warehouse operator or
common carrier or an agent of that person or entity.

Sec. 9. Maine Meth Watch Program. In establishing the Maine
Meth Watch Program under the Maine Revised Statutes, Title 22,
chapter 556, the Department of Health and Human Services, Office
of Substance Abuse shall use the national effort known as "Meth
Watch" first begun in Kansas as a public-private partnership.

Sec. 10. Effective date. This Act takes effect November 1,
2005.

SUMMARY

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4 This amendment replaces the bill. It places several
6 restrictions on over-the-counter decongestant cold medicines that
8 can be used in the toxic chemical process of making the illegal
10 drug methamphetamine. The amendment affects medicines in solid
pill or dry form that contain ephedrine, pseudoephedrine or
phenylpropanolamine because those products are commonly used to
manufacture methamphetamine. The amendment defines those products
as "targeted methamphetamine precursors."

12 The amendment restricts the sale of multiple-dose packages
14 of targeted methamphetamine precursors to blister packs
16 containing no more than 3 grams and allows no more than 3
18 packages to be sold in a single transaction. It requires targeted
methamphetamine precursors to be sold by a pharmacist, pharmacy
20 technician or employee under that person's supervision after the
pharmacist's approval and requires that the product be stored in
22 a location that is locked or otherwise not accessible to the
public. It authorizes but does not require a pharmacy to request
identification and log sales of these products.

24 The amendment allows single-dose packages to continue to be
26 sold at any store as long as they are close to and within sight
of store staff.

28 The amendment allows a pharmacist or pharmacy technician to
30 refuse to make a sale of targeted methamphetamine precursors and
32 to report the situation to a law enforcement agency. It confers
immunity from civil liability on a pharmacist or technician who
in good faith refuses to sell the drug or who makes a report to a
law enforcement agency.

34 The amendment designates more than 9 grams of a targeted
36 methamphetamine precursor possessed by a person as a Schedule Z
illegal drug and provides an affirmative defense if it is
38 possessed for a legitimate medical purpose. The amendment
requires the Department of Health and Human Services, Office of
40 Substance Abuse to create the Maine Meth Watch Program, based on
a national so-called "Meth Watch" program, which helps deter
42 suspicious sales and theft of targeted methamphetamine
precursor-containing medicines and other products used in the
44 illegal manufacturing of methamphetamine.

46 The amendment authorizes the Director of the Office of
Substance Abuse in the Department of Health and Human Services to
48 adopt major substantive rules on further restrictions for the
liquid or gel forms of targeted methamphetamine precursors, on
mandatory identification and on requiring a purchase log if the
50 Director of the Maine Drug Enforcement Agency finds circumstances

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COMMITTEE AMENDMENT **A** to S.P. 575, L.D. 1601

2 that pose a threat to the public health, safety and welfare and
the Director of the Office of Substance Abuse has consulted with
4 the joint standing committee of the Legislature having
jurisdiction over health and human services matters.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 1601

LR 0557(02)

An Act To Prevent the Manufacturing of Methamphetamine in Maine

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class B, C and D crimes; increases correctional and judicial costs.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Office of Substance Abuse in the Department of Health and Human Services can be absorbed by the office utilizing existing budgetary resources.