

SUBJECT: Restricting sale of pseudoephedrine and production of methamphetamine

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 5 ayes — Driver, Jackson, Frost, Hegar, Veasey

0 nays

2 absent — Burnam, Hupp

WITNESSES: For — Becky Bailey, Parents Against Illegal Narcotics; Frankie Bailey, Young County Sheriff's Department; Sgt. Richard Burns, Austin Police Department; Michael Fouts; Tom Gaylor, Texas Municipal Police Association; Sonja Gray, Parents Against Illegal Narcotics; Linda Green; Mike Grimes, Oklahoma Highway Patrol; David C. Hagerman, Tarrant County District Attorney's Office; Spencer Key, Parents Against Illegal Narcotics; Barry Macha; Becky Perez, Against Illegal Narcotics; Elizabeth A. Posey; Boyd Richie, Young County Attorney; Brian Surber, Oklahoma Bureau of Narcotics; Greg Wright

Against — Karen Heikkala, ACLU of Texas

On — Joan Bates, Department of State Health Services; Jennifer Hawks Bland, Consumer Healthcare Products Association; John M. Clayton, Ph.D., Schering-Plough HealthCare Products, Inc.; Michael Heald, Drug Enforcement Administration; Liz Kromrei, Department of Family and Protective Services – CPS; Pam Parker, Department of Family and Protective Services; Oren Peacock, Texas Retailers Association; Marilyn Sepich; John Spragins, Wichita Falls Police Department and North Texas Regional Drug Enforcement Task Force; Susan Tennyson, Texas Department of State Health Services

DIGEST: **Sale of pseudoephedrine.** CSHB 164 would restrict the sale of over-the-counter (OTC) products containing pseudoephedrine to pharmacies and to stores that are not pharmacies that have a special certificate. It would not apply to the sale of liquid products containing pseudoephedrine. Any business that sold pseudoephedrine would be required to display products containing pseudoephedrine in such a way that a customer could access those products only with the help of a store employee. In order to obtain a

certificate to sell pseudoephedrine, a non-pharmacy would be required to apply to the Department of State Health Services (DSHS), and in deciding whether to issue a license, the department would consider whether the business sold a variety of medicines and whether it employed measures to deter the theft of products containing pseudoephedrine.

A person who wished to purchase OTC pseudoephedrine would be required to show a driver's license, be at least 16 years of age, and sign for the purchase. The store would be required to make a record of the sale that included the name of the customer, the date of purchase, and the number of grams of pseudoephedrine purchased, and would be required to keep the records for two years from the date of purchase. The store would be required to limit a customer's single-transaction purchase of pseudoephedrine to either two packages or 6 grams.

Violation of the laws regulating the sale of pseudoephedrine could result in an administrative penalty of up to \$10,000. The amount of the penalty would be based on such factors as the seriousness of the violation, the history of previous violations, and whether the violator acted in good faith. The department would be required to notify a business of an administrative penalty, and the business would be allowed to appeal the penalty. If a business appealed, it would be entitled to an administrative hearing. If a business did not pay or appeal the fine, the attorney general could file suit to collect the fine.

Any wholesaler who furnished pseudoephedrine to retailers would be required to make available to DPS all records of such transactions. A wholesaler would be required to notify DPS of any order for a suspicious quantity of pseudoephedrine. Failure to provide such reports to DPS could result in the wholesaler being found guilty of the unlawful transport of chemical precursors, which is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Manufacture of methamphetamine. Intent to unlawfully manufacture methamphetamine would be presumed if a person transported or possessed more than 9 grams or 300 tablets of pseudoephedrine and any item specially designed or assembled for use in the manufacture or concealment of methamphetamine.

A person who manufactured methamphetamine would be strictly liable for exposing another to methamphetamine or its by-products for the greater of

the amount of actual damages for personal injury, death, or property damage as a result of the exposure or \$20,000 for each violation.

Protection of children. A Department of Family and Protective Services employee, a law enforcement officer, or a juvenile probation officer could take possession of a child if the child's parent or a person who had possession of the child permitted the child to remain on premises used for the manufacture of methamphetamine. An officer could take possession if the officer had personal knowledge of such a situation or if someone had provided information based on personal knowledge that such a situation had occurred.

A person could be found guilty of abandoning or endangering a child if the person manufactured methamphetamine in a child's presence. Punishment for such an offense would be a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Other provisions. The bill would require any wholesale distributor of nonprescription drugs to obtain a wholesale drug distribution license from DSHS. Such a license would be valid for two years. The department could refuse an application or suspend or revoke a license if the person created or sold a counterfeit drug or had violated the Texas Controlled Substances Act or the Texas Dangerous Drugs Act. Engaging in the wholesale distribution of drugs without a license would be illegal, as would be the failure to provide required reports to the department. The changes in law made affecting the requirement of a wholesale drug distribution license would apply to an offense committed on or after March 1, 2006, and would take effect only if SB 1685 or a similar bill regulating wholesale prescription drug distributors was enacted and became law.

The bill would apply to an offense committed or a civil action that accrued on or after September 1, 2005. The bill would take effect on June 1, 2005, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

Methamphetamine abuse has become a problem of epic proportions in Texas, hitting rural areas the hardest. Methamphetamine is highly addictive and inexpensive to make. Methamphetamine addicts have a very low rate of overcoming addiction, even with full drug rehabilitation treatment. Addicts often manufacture the drug themselves by combining pseudoephedrine from cold tablets and other easily obtained chemicals.

The manufacturing process is extremely dangerous and involves highly combustible chemicals. Explosions in methamphetamine labs have become increasingly common, and cleaning up a meth lab is hazardous and costs between \$45,000 and \$50,000. The fumes and chemical residue produced by the manufacturing process are highly dangerous, especially to the young children of addicts who often are exposed to such chemicals. Police frequently find children in meth labs, and children of meth addicts are much more likely to be neglected and physically and sexually abused.

It is not possible to manufacture methamphetamine without pseudoephedrine. Pseudoephedrine is most frequently obtained within the United States by chemically processing cold tablets. Oklahoma, which has regulated the purchase of products containing pseudoephedrine in a manner similar to that proposed in CSHB 164, has seen a massive reduction in the number of methamphetamine labs.

CSHB 164 would allow allergy sufferers to continue to purchase products containing pseudoephedrine and would not penalize people who purchased such products for legal use. It would require only common sense regulations that have been enacted by other states and have proven to reduce the number of meth labs. While the bill would not affect pseudoephedrine imported illegally from Mexico used in the production of methamphetamine, it is an important first step in decreasing the number of meth labs and the amount of methamphetamine available in Texas.

OPPONENTS
SAY:

There are more than 80 million allergy sufferers in the United States. Products containing pseudoephedrine are very effective in combating allergy symptoms, helping millions of people lead productive lives. Regulating products containing pseudoephedrine by requiring people to sign a log before purchasing such products could discourage people from making legitimate purchases, which could have such unintended consequences as injuring the pharmaceutical companies that manufacture cold and allergy medications. The existence of such logs also could lead to abuse of purchasers' personal information and privacy.

Only a very small percentage of people who purchase products containing pseudoephedrine do so in order to produce methamphetamine. Tightly regulating sales of such products in the hopes of targeting this minority is unfair to the majority of people who purchase those products for legal use. People who live in rural areas many miles away from pharmacies may

have a legitimate need to buy large quantities of products containing pseudoephedrine. The bill would not allow them to do so.

OTHER
OPPONENTS
SAY:

The people who manufacture methamphetamine using products containing pseudoephedrine purchased in the United States typically run small labs and are mainly producing to satisfy their own addictions. The biggest manufacturers illegally obtain pseudoephedrine from Mexico, and the bill would not target those large-scale manufacturers.

Currently, only pseudoephedrine contained in a solid form can be used to manufacture methamphetamine. However, it possible that manufacturers of methamphetamine may discover a way of using liquid pseudoephedrine in the future. In anticipation of this possibility, the bill also should regulate the sale of liquid products containing pseudoephedrine.

Instead of just targeting the production of methamphetamine, the Legislature should look for ways to treat methamphetamine addicts and increase public awareness about the dangers of methamphetamine.

NOTES:

The bill as introduced provided for numerous criminal penalty enhancements. It would have limited parole eligibility for inmates convicted of manufacturing methamphetamine. It would have allowed an officer to take possession of a child only if the officer had personal knowledge that the child was allowed to remain on premises where methamphetamine was being produced. It would not have presumed that a person had endangered a child if the person had manufactured methamphetamine in the child's presence. It would have allowed only pharmacies to sell pseudoephedrine. It would not have required a minimum age limit for the purchase of products containing pseudoephedrine. The original would have allowed a customer to purchase up to 9 grams in a single transaction, as opposed to 6 grams in the committee substitute. It would have allowed for a maximum penalty of \$5,000 for violation of the laws relating to selling products containing pseudoephedrine.

The Legislative Budget Board estimates that CSHB 164 would result in net gain to general revenue-related funds of \$3.8 million in fiscal 2006-07. It also estimates that DSHS would require 19 new FTEs to issue

certificates and perform inspections. Certificate fees to non-pharmacy sellers of pseudoephedrine would more than compensate for additional staff and associated costs.

The companion bill, SB 112 by Van de Putte, passed the Senate on May 11.