

Senate Appropriations Committee Fiscal Summary
Senator Christine Kehoe, Chair

SB 484 (Wright)

Hearing Date: 05/26/2009

Amended: 05/12/2009

Consultant: Jacqueline Wong-Hernandez **Policy Vote:** Public Safety 6-1

BILL SUMMARY: This bill provides that any person who obtains ephedrine, pseudoephedrine, and specified related drugs without a prescription, as specified, shall be guilty of an infraction or misdemeanor.

Fiscal Impact (in thousands)				
<u>Major Provisions</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>Fund</u>
Potential revenue loss				
Sales Tax	\$435- \$4,350	\$435-4,350	\$435-4,350	General
PERS	Unknown, potential indirect costs to premiums			
Potential savings				
CDCR	(\$1,989-\$3,979)	(\$1,989-\$3,979)	(\$1,989-\$3,979)	General
Toxic Substance Control	(\$500-1,000)	(\$500-1,000)	(\$500-1,000)	General
Bureau of Forensic Services	(\$500-1,200)	(\$500-1,200)	(\$500-1,200)	General

STAFF COMMENTS: This bill may meet the criteria for referral to the Suspense File.

This bill requires products containing pseudoephedrine and related drugs to be dispensed only with a prescription, which will restrict their availability (and reduce diversion for illicit drug production) and eliminate the state's ability to collect sales tax on these products. This bill is likely to cause both substantial sales tax revenue loss to the state, and substantial state savings in incarceration and clandestine methamphetamine lab clean up. These costs and savings will both begin to occur in the first year, and the net fiscal outcome will be determined by the behavior of individuals, private companies, and state agencies. It is likely that more substantial long term savings will result from the bill, beyond what is reflect in the fiscal analysis of the first three years.

Prior to 1976, products containing pseudoephedrine and certain related drugs were available only by prescription. For the following 30 years, they were available over the counter without restriction (for most products, not including certain diet pills). The most common products containing pseudoephedrine are allergy and cold medicines, since it is used medically as a decongestant. The federal Combat Methamphetamine Epidemic Act of 2005 (Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177) was signed into law March 9, 2006, (and went into effect in April 2006) which required that all products containing ephedrine, pseudoephedrine, or phenylpropanolamine be kept behind a pharmacy counter (or in some way locked up), and that individuals wishing to purchase them must present identification and record various indentifying information and a signature in a log book kept by the retailer. This law also limited the quantity that could be purchased in a 30-day period.

States were required to comply with this law, or to pass more restrictive laws governing the dispensation of pseudoephedrine and related products. Oregon passed a law classifying these products as controlled substances, and required that purchasers have a prescription for the product. This law went into effect on July 1, 2006.

Drug companies that produced brand-name drugs that were effected by this law reformulated their products with other active ingredients (eliminating pseudoephedrine) and kept the new products (under the same name), on the accessible shelves and the original products behind the pharmacy counter. There are, for example, two different formulas of Claritin, Zyrtec, Sudafed, and Tylenol Sinus. Other products, such as DayQuil, were reformulated to meet the new over-the-counter (OTC) laws, and the original product was discontinued.

Based upon Board of Equalization 2004 sales estimates of the pseudoephedrine and related products in California, there appears to have been a 90% decrease in purchases of these products since 2004. This is likely attributable to increased restrictions on the products. In the past few years, consumers either purchased a different OTC formula or product, and did not take the extra steps of standing in line and recording their personal information to purchase the original products, or they went to their doctors and got prescriptions for different products. It is very likely that most consumers purchased items that were available on the shelf, especially when labeled with the same brand and purpose as the products they previously purchased in the same manner. Even with a 90% decrease in sales of pseudoephedrine and related products, sales are substantial.

In 2008, approximately \$62,151,935 in gross sales revenue was generated from these products in California, all purchased behind the counter in retail establishments. The state-only portion of the approximate sales tax revenue was \$4,350,635. Since there is no sales tax collected on prescription drugs, making all of these products available only be prescription jeopardizes the sales tax revenue to the extent that consumers seek prescriptions for these products. If there was an additional 90% decrease in use (as was seen when consumers had to take additional steps to obtain these products), there would still be a \$435,000 loss in state sales tax annually. Moreover, the decrease (and change to other OTC products) is likely to be less substantial because the existing pool of consumers consists of individuals who already take additional, inconvenient steps to obtain these specific products. Additionally, for consumers with private insurance plans with low copayments, it may be less expensive to get a prescription for these products than to buy and alternative OTC product, incentivizing some consumers (especially those with ongoing conditions such as allergies) to get prescriptions.

Restricting pseudoephedrine products further will likely result in substantial savings, to the extent that they are being diverted to produce methamphetamines. Production alone, in California, disaggregated from methamphetamine possession and use, results in more than \$4,000,000 in state incarceration costs.* Methamphetamine lab clean up cost the California Department of Toxic Substance Control (DTSC) \$1,055,098 in 2008, and various state law enforcement agencies (primarily the Bureau of Forensic Services) about \$1,500,000 annually. There are additional costs to local law enforcement, county jails, and courts.

Since requiring prescriptions for these drugs in 2006, Oregon has seen a 91% decrease in methamphetamine labs, which has resulted in corresponding state savings for both incarceration and clean up. If this bill results in a fraction of the decrease seen in Oregon, the savings would be substantial. Because Oregon began requiring prescriptions just two months after the federal restrictions, however, it is unclear how much of the decrease in methamphetamine production is the direct result of requiring prescriptions. Oregon saw a 71% decrease in 2006, at the same time that California saw a 25% decrease after implementing the federal law. It was thought that the restrictions on the necessary ingredients for methamphetamine production were pushing labs into Mexico in 2005-2007.

In 2008, Mexico outlawed the use and importation of pseudoephedrine, in an attempt to combat its own methamphetamine production problem. The US Drug Enforcement Agency (DEA) has indicated that it expects an increase in production in the United States as a result of this law, but also notes that production may move to Central and South America, where enforcement is much more difficult.

The extent to which methamphetamine production and related crimes in California would be reduced by this bill is unknown. It is likely that more restrictive laws in California will push methamphetamine production to Nevada and other neighboring states, which will result in state savings directly related to lab clean up, and likely decrease incarceration for methamphetamine production (which carries longer sentences than possession). According to law enforcement officials, pseudoephedrine-containing pills are the most common way methamphetamines are domestically produced, and diversion of these products for illicit use is rampant. There is extensive reporting of "smurfing" operations, in which several people go from store to store purchasing the legal limit of pseudoephedrine products. By eliminating their ability to do so, production will decrease substantially. While it is well-documented that blister packs of pills are found in methamphetamine production labs in California, and can often be traced to California retail purchases, it is not known the extent to which the purchases currently made in retail stores (and from which the state receives sales tax) are being diverted for methamphetamine production.

It is not possible to determine the extent to which the inevitable loss in sales tax may yield far greater savings to the state in averted specific criminal activity and the myriad costs it incurs.

*Based on the LAO's calculation of \$23,000 residual cost to incarcerate each inmate. There are only 173 inmates in state prison for specific methamphetamine production crimes, including: (11379.6 H&S) manufacturing of methamphetamine, (11383 H&S) possessing pseudoephedrine with intent to manufacture methamphetamine, and (11383.5 H&S). Calculation based on the lowest prison term, and does not include related enhancements.