

Date of Hearing: June 30, 2009
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Juan Arambula, Chair

SB 484 (Wright) – As Amended: May 12, 2009

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

EXISTING LAW:

- 1) Provides the following restrictions and requirements for the sale of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine in over-the-counter retail transactions:
 - a) A retailer in a single transaction may sell no more than three packages of a product containing these chemicals.
 - b) A retailer may sell no more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine.
 - c) A first violation of these restrictions is a misdemeanor, punishable by a jail term of up to six months, a fine of up to \$1,000, or both.
 - d) A second or subsequent violation is a misdemeanor, punishable by a jail term of up to one year, a fine of up to \$10,000, or both. [Health and Safety Code (HSC) Section 11100(g).]
- 2) States any manufacturer, wholesaler, retailer, or any other person or entity in this state that sells, transfers, or otherwise furnishes any substance specified in existing law to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in existing law shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice (DOJ). [HSC Section 11106(a)(1)(A).]

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "It is estimated that the yearly cost of the nation's meth epidemic is in excess of \$23 billion. (RAND Study.) Since 1998, California has led the nation in the number of methamphetamine seizures, (The DEA's El Paso Intelligence Center) and more than 85% of the meth in the United States comes from superlabs in California and Mexico. While criminals use a number of easily obtained substances to manufacture meth, the one ingredient they cannot do without is

ephedrine/pseudoephedrine. Without a ready supply of this ephedrine/pseudoephedrine, they cannot make meth.

"Currently, state law (11100 Health and Safety Code) makes it illegal for a retail distributor to sell in a single transaction more than three packages or more than 9 grams of a product containing ephedrine or pseudoephedrine. The Federal Combat Methamphetamine Epidemic Act (CMEA) requires that products containing pseudoephedrine/ephedrine be kept behind the counter, and sold only after an appropriate form of identification is provided by the purchaser. Purchasers are limited to the purchase of 3.6 grams of pseudoephedrine/ephedrine products in a day.

"The restrictions that have been placed on pseudoephedrine/ephedrine products are ineffective and not enforceable. Unfortunately, some retailers are ignoring the limit and are allowing the purchase of medicines containing the precursor drugs without controls. Additionally, the current statutory system includes no way to limit sales when purchasers buy from multiple retail chains.

"The problem is drug dealers who manufacture methamphetamine circumvent this daily legal purchasing limit by 'smurfing' these products, something the law did not take into account. An accomplished smurfer (someone who makes numerous purchases of over-the-counter ephedrine for the purpose of manufacturing methamphetamine) can abuse the California system by purchasing enough ephedrine/pseudoephedrine-based products in one day to allow for the production of one pound of methamphetamine. They utilize co-conspirators, relatives, as well as paying homeless people, to purchase these products solely for the manufacture of methamphetamine.

"Due to the ineffectiveness of current state and federal laws, methamphetamine is being manufactured throughout California in increasing amounts. The environmental impact alone is costing the state hundreds of thousands of dollars per year for clean-up, in addition to the manpower utilized in law enforcement to investigate 'smurfers' in order to locate methamphetamine labs. California spends millions of dollars each year arresting, prosecuting, and incarcerating meth manufacturers.

"SB 484 will permit the purchase of ephedrine-based drugs only through a prescription from a doctor. This legislation is modeled after a similar and very successful law passed in Oregon which has resulted in a huge drop in meth labs and meth production in that state. In 2003, the last year products with ephedrine/pseudoephedrine were available without restriction, Oregon discovered 473 meth labs. In 2007, the first full year the prescription-only requirement was in place, Oregon found 18 meth labs. Other states are now considering similar legislation as well as the Congress. This drop in the number of meth labs constitutes a 96% reduction in meth laboratories following enactment of the prescription-only requirement. Based on Oregon's successful statute, Senator Ron Wyden has introduced the Meth Lab Elimination Act of 2009 in the United States Senate. Like the Oregon State prescription-only requirement, the bill would make products with ephedrine/pseudoephedrine prescription-only.

"85 percent of the methamphetamine making its way to the other 49 states comes from or through California, and illicit meth labs in California produce more meth than produced in any other state in the nation. In fact, California labs produce more meth than the next 5 top

meth producing states combined. In 2008, 19 meth superlabs (labs capable of producing at least 10 pounds of meth) were discovered and dismantled nationwide. 17 of those 19 labs were found in California.

"If enacted, SB 484 would wipe out meth labs in California. In 2006, Oregon enacted the first law in the nation making pseudoephedrine available by prescription only. Prior to enacting, Oregon busted more than 200 meth labs per year. In 2008, after making pseudoephedrine prescription only, Oregon Law Enforcement found 4 meth labs."

- 2) Background: According to information provided by the AG's Office (the sponsor of this bill), "Currently, retailers keep all products containing ephedrine, pseudoephedrine, phenylpropanolamine, norpseudoephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethypseudoephedrine, Chloroephedrine, or Chlorospseudoephedrine behind the counter. Anyone who makes a purchase must show identification and the purchase is logged either by paper or electronically.

"SB 484 will permit the purchase of ephedrine-based drugs only through a prescription from a doctor. This legislation is modeled after a similar and very successful law passed in Oregon which has resulted in a huge drop in meth labs and meth production in that state.

Results in Oregon: In 2003, the last year products with ephedrine/pseudoephedrine were available without restriction, Oregon discovered 473 meth labs. In 2007, the first full year the prescription-only requirement was in place, Oregon found 18 meth labs. This drop in the number of meth labs constitutes a 96% reduction in meth laboratories following enactment of the prescription-only requirement. Other states are now considering similar legislation as well as the Congress. Based on Oregon's successful statute, Senator Ron Wyden has introduced the Meth Lab Elimination Act of 2009 in the United States Senate. Like the Oregon State prescription-only requirement, the bill would make products with ephedrine/pseudoephedrine prescription-only nationwide."

- 3) National Drug Threat Assessment and U.S. Department of Justice (DOJ) Reports: According to the United States DOJ, National Drug Intelligence Center, National Drug Threat Assessment 2009:

"Ephedrine and pseudoephedrine import restrictions in Mexico contributed to a decrease in methamphetamine production in Mexico and reduced flow of the drug from Mexico to the United States in 2007 and 2008. Methamphetamine shortages were reported in some drug markets in the Pacific, Southwest, and West Central Regions during much of 2007. In some drug markets, methamphetamine shortages continued through early 2008. In 2008, however, small-scale domestic methamphetamine production increased in many areas, and some Mexican Drug Threat Assessment (DTOs) shifted their production operations from Mexico to the United States, particularly to California. The rise in domestic methamphetamine production was fueled by an increase in domestic pseudoephedrine trafficking by individuals and criminal groups circumventing national retail pseudoephedrine sales restrictions. These individuals and criminal groups often make pseudoephedrine product purchases at or below the allowable purchase limit from multiple retail outlets.

Reduced Mexican methamphetamine production resulted in decreased methamphetamine availability in many U.S. methamphetamine markets in 2007. Analysis of drug availability

data as well as law enforcement reporting reveals decreased availability of methamphetamine in many U.S. drug markets beginning in early 2007 and continuing into 2008 (internal citation omitted).

"Rising methamphetamine prices and decreasing purity were evidence of decreasing methamphetamine availability during 2007. According to the Drug Enforcement Administration's System to Retrieve Information on Drug Evidence (STRIDE), the price per pure gram for methamphetamine increased 90 percent (\$149.78 to \$284.12) from January 2007 through December 2007. STRIDE data also show that average methamphetamine purity decreased by 28 percent (56.92% to 40.98%) during the same period. Also, Quest Diagnostics data show that positive methamphetamine tests in workplace drug tests declined steadily through 2007 and like STRIDE data, Quest Diagnostics data indicate instability in methamphetamine supply and availability throughout that period. Quest Diagnostics data show a 38.8 percent decrease in the rate of positive methamphetamine workplace drug tests from the first quarter of 2007 (0.18%) to the fourth quarter of 2007 (0.11%).

"Methamphetamine seizure data also indicate a reduction in the flow of methamphetamine and decreased availability in 2007. Data shows that the amount of methamphetamine seized in the United States decreased sharply in 2007, particularly during third quarter 2007. The total amount of methamphetamine seized in 2007 (4,689.55 kg) was 34 percent lower than in 2006 (7,106.68 kg).

"Mexican DTOs are increasingly circumventing chemical sale and import restrictions in Mexico by diverting ephedrine and pseudoephedrine from illicit sources in South America. DEA reporting indicates that Mexican DTOs are increasingly using South America as a source and transshipment zone for ephedrine and pseudoephedrine shipments destined for methamphetamine laboratories in Mexico as well as to laboratories tied to Mexican DTOs that are located in South American countries. For instance, the amount of ephedrine imported into Argentina increased from 5 metric tons in 2006 to 26 metric tons in 2007, indicative of an increase in such activity in that country. Likewise, DEA reporting further indicates that Argentine authorities seized an operational methamphetamine laboratory that had ties to a Mexican DTO and that methamphetamine previously produced in the lab had been transhipped to Mexico for distribution. Seizure data from 2007 and 2008 indicate that ephedrine and pseudoephedrine are smuggled from South American source areas in containerized cargo, aboard commercial flights by couriers, and by mail delivery services."

According to reports available online, the U.S. DOJ reports California methamphetamine laboratory incidents decreased from 2003 to 2007 from 1,281 lab incidence in 2003 to 221 lab incidence in 2007. [www.usdoj.gov/dea/pubs/state_factsheets/California.html], visited on June 24, 2009.] As further explained by the U.S. DOJ,

"In recent years, there has been a decrease in the number of meth labs seized in California and an increase in the number of meth labs just south of the border in Mexico. Rural areas in the Central Valley are the source of much of the meth produced in California and seized elsewhere. As the supply of pseudoephedrine from Canada has diminished after successful law enforcement operations, there has been a noticeable increase in pseudoephedrine and ephedrine seized that originated from China. Restrictions on pseudoephedrine importation into Mexico, balance-of-power issues among rival Mexican cartels, and increased enforcement efforts by the current Mexican government have all significantly impacted

methamphetamine manufacturing and the smuggling of finished product into the Los Angeles area." [*Id.*]

4) Arguments in Support:

- a). According to the California Attorney General's Office (the sponsor of this bill), "SB 484 would require a prescription for products containing ephedrine /pseudoephedrine. This legislation is modeled after a similar and very successful law passed in Oregon which has resulted in a huge drop in meth labs and meth production in that state.

"Currently, state law requires that products containing pseudoephedrine/ephedrine be kept behind the counter, and sold only after an appropriate form of identification is provided by the purchaser. Purchasers are limited to the purchase of 3.5 grams of pseudoephedrine/ephedrine products in a day. These restrictions on pseudoephedrine/ephedrine products are not strict enough and do not work.

Unfortunately, some retailers are ignoring the limit and are allowing the purchase of medicines containing the precursor drugs without controls. Additionally, the current statutory system includes no way to limit sales when purchasers buy from multiple retail chains.

"The problem is that drug dealers who manufacture methamphetamine circumvent this daily legal purchasing limit by "smurfing" these products, something the law did not take into account. An accomplished smurfer (someone who makes numerous purchases of over-the-counter ephedrine for the purpose of manufacturing methamphetamine) can abuse the California system by purchasing enough ephedrine/pseudoephedrine-based products in one day to allow for the production of one pound of methamphetamine.

"The enormous impact of methamphetamine on human life, public safety and health costs is hard to overemphasize. It is estimated that the yearly cost of the nation's meth epidemic is in excess of \$23 billion. Since 1998, California has led the nation in the number of methamphetamine seizures, and more than 85% of the meth in the United States comes from superlabs in California and Mexico. While criminals use a number of easily obtained substances to manufacture meth, the one ingredient they cannot do without is ephedrine/pseudoephedrine. Without a ready supply of this ephedrine/psuedoephedrine, they cannot make meth.

"Meth is currently the most prevalent manufactured illegal drug produced in the United States. The drug is made easily in clandestine laboratories with relatively inexpensive over-the-counter ingredients. It can be snorted, smoked, or injected. Meth is a derivative of ephedrine/psuedoephedrine, which is contained in many cold medications and inhalers. The ingredients used to produce meth include fertilizer (anhydrous ammonia), gun cleaner, cold remedy pills, lithium (from batteries), acetone, alcohol, phosphorous (from matches and road flares), sulfuric acid, and brake cleaner. Producers combine these ingredients during a process called "cooking," which creates toxic fumes and waste as by-products. Some of the chemicals used in the "cooking" process are volatile and frequently explode. The explosions have resulted in fires, chemical burns, serious physical injuries, and death. Every pound of meth produces five pounds of toxic waste, and cooks frequently dump the toxic waste on the ground or in the water supply, which pollutes the environment.

"California leads the nation in the amount of meth seized in the past few years. In 2008, California seized 119 meth labs, by far the highest total in the Western United States. Also in 2008, a total of 17 meth 'super labs' were seized. A super lab is a lab capable of producing in excess of 10 pounds of meth. 15 of the 17 super labs were seized in California. None of these figures count meth lab dump sites which indicate chemical disposal after a successful meth 'cook.'"

- b) According to the California Narcotic Officers' Association, "The law enforcement community is in support of Senate Bill 484, which will require a prescription prior to the sale of products containing pseudoephedrine. Pseudoephedrine is the key ingredient in the manufacture of methamphetamine. In addition to the devastating nature of the drug itself, the meth production process and meth labs pose an unacceptable risk to communities, the environment, and to children who are drug endangered by dint of their being at locations where meth is being manufactured.

"Currently, California has legislation that limits the packages of pseudoephedrine that may be sold, requires the showing of identification, and requires that pseudoephedrine must be kept behind the counter. Although these measures were successful for a time in tamping down the diversion of pseudoephedrine into meth production, sophisticated smurfing operations can now easily evade California law. Narcotics enforcement officers estimate that a sophisticated smurfing operation can purchase enough pseudoephedrine in one day to manufacture over \$20,000 worth of meth.

"In contrast to California's failing system (it is estimated that over 90% of the pseudoephedrine used to cook meth in California comes from California retail outlets), Oregon passed legislation that required a prescription for pseudoephedrine products prior to sale. The results were dramatic. Prior to enactment of the Oregon law, there were an average of 284 methamphetamine labs seized annually (and this was under a law similar to California's current law). In 2007, the most recent full year of available meth lab statistics, only 2 labs and 16 dumpsites and remnant sites were shut down. In effect, the law virtually eliminated Oregon's meth labs. Oh, one more thing, prior to enactment of Oregon law, legislative testimony revealed the 70% of the pseudoephedrine sales from independent stores and pharmacies was being diverted into the manufacture of meth; after the enactment of the Oregon law, those sales dried up.

"We no longer have to guess what works and what doesn't; Oregon has shown the way. Senate Bill 484 is drawn from Oregon law. It is easily the most important methamphetamine law ever put before the California Legislature.

"One final note, the sky did not fall when the Oregon law was enacted. First, many people simply began purchasing some of the other 30 other cold medications not containing pseudoephedrine; second, those who continued to use pseudoephedrine products supported the law; third, manufacturers of cold medications are accelerating their reformulation processes to exclude pseudoephedrine in their products."

5) Arguments in Opposition:

- a) According to the Consumer Healthcare Products Association (CHPA), "Because of existing restrictions, millions of consumers wait in line at the pharmacy and subject themselves to state and federal criminal prosecution if they exceed legal quantity limits to buy pseudoephedrine (PSE). This demonstrates that for many individuals, PSE is the best remedy even though other decongestants are available on the shelves are easier to obtain. Prescription status for PSE would mean substantial new costs for these consumers, measured in both time and money, to access important and needed medicines. We must oppose SB 484 for this reason.

"Since Oregon began requiring a prescription for PSE in 2006, no other state has followed suit. While Oregon has seen a significant reduction in meth lab incidents, it is comparable to the reductions achieved in its neighboring states which do not require a prescription. The states experiencing the highest numbers of meth lab incidents, such as Missouri, are instead establishing electronic tracking systems to enforce purchase quantity limits without all the unintended consequences of moving an over-the-counter (OTC) to prescription status. Oklahoma has had its tracking system since 2006 and has reduced its meth lab incidents by more than 90% from their peak. In the first full year of using electronic tracking, Oklahoma's lab incidents were cut in half compared to the prior year.

"Requiring a prescription for pseudoephedrine would cause legitimate consumers to take time off to see a doctor when they need a cold or allergy medicine containing pseudoephedrine, even though these products are approved by the U.S. Food and Drug Administration for nonprescription use. They would have to find a pharmacy, during pharmacy hours, and wait for their prescription to be filled, and pay prescription-drug prices or their co-pay for a nonprescription drug.

"Requiring a prescription for an OTC drug also will impose direct costs on the state to reimburse physicians every time a Medicaid or SCHIP recipient sees a doctor to obtain a PSE prescription. The state will also face increased health insurance premiums for state employees and will lose over \$4,460,000 in lost sales tax revenue (based on 2008 sales data, not including Wal Mart) because prescription drugs are tax-exempt while OTC's are subject to sales tax.

"Since Combat Methamphetamine Epidemic Act (CMEA) and similar state restrictions took effect, there has been a 61% nationwide drop in meth lab incidents. California's lab incidents have been reduced by 86%, from a high of 2,579 incidents in 1999 to 349 lab incidents in 2008, according to the U.S. Drug Enforcement Administration statistics.

"California should enforce the sales restrictions that most states and federal law have already enacted. CHPA supported the federal CMEA, signed into law in 2006, which requires all PSE-containing OTC's to be sold from behind the counter, limits purchases to 3.6 grams per day and 9 grams per 30 days, and requires purchaser signatures in a logbook. California has yet to enact similar restrictions that would give state and local law enforcement jurisdiction to enforce these sale limits."

- b) According to the California Grocers Association, "SB 484 seeks to require consumers to obtain a prescription for purchase of any product containing ephedrine or pseudoephedrine. While grocers understand the need to help control access to products that

contain compounds that may be extracted and used to manufacture methamphetamine, SB 484 is the wrong approach. Products containing ephedrine and pseudo ephedrine are already kept behind the counter, with limits on quantities purchased and mandatory tracking. SB 484 is bad for consumers, because it drives up health care costs and reduces access to safe and effective medication. SB 484 is bad for California's bottom line because it significantly reduces tax revenues to both state and local governments and increases pressures on already burdened public health programs.

"For many consumers, especially the poor and uninsured, the additional cost of having to see a physician to obtain a prescription creates an insurmountable burden. Consumers would be forced to take time off work for expensive medical appointments - a process that could take days or even weeks. Some of those individuals may not be compensated by their employer for that time, or may be forced to use paid sick leave or vacation time that would otherwise be available for more serious health difficulties. In the alternative, some consumers may be unable to navigate the added burdens imposed by SB 484 because they do not have reliable transportation, a relationship with a physician or the money to pay for an office visit. They would be forced to forego treatment for mild conditions only to see those ailments progress to much more serious conditions requiring much more expensive and invasive treatment.

"The state and local governments could also see significant declines in sales tax revenue as OTC products are subject to sales tax while prescriptions are not. In 2008, over \$4 million was generated in state sales tax revenue from familiar and effective over-the-counter (OTC) products (e.g., Sudafed, Claritin-D, Advil Cold and Sinus; Zyrtec-D, Tylenol Cold, Aleve-D, Mucinex D, ect.) that contain ephedrine or pseudo ephedrine. That sales tax revenue would be lost.

"Finally, the state and local government could see dramatic increases in costs as patients utilize physician services for office visits to obtain prescriptions and pharmacy services to purchase products that currently are available OTC. Medi-Cal enrollees who currently purchase OTC would have to wait for office visits to obtain a prescription, a new cost to the Medi-Cal program. In addition, the Healthy Families program would experience significant new cost pressures because it does not currently cover OTC drugs, but it does cover prescriptions."

- c) According to Bayer HealthCare, "Products containing pseudo ephedrine (PSE) have already been restricted, in terms of access and quantity, in the effort to curb the manufacturing of methamphetamines. California law requires all over-the-counter products containing PSE to be sold from behind the counter, purchases must be limited to 3.6 grams per 30 days, and each purchaser must register their name in a logbook. SB 484 would heighten the barriers to these safe and effective products. Rather than consumers having the ability to treat their colds and allergies with the convenience of a trip to the store, SB 484 would require the scheduling of an appointment with a physician and obtaining a prescription. The 6.5 million uninsured Californians with no direct access to a physician will be forced to treat their colds and allergies through a visit to a hospital emergency room or a community clinic. The FDA has determined OTC products containing PSE to be safe, effective, and to be available without a prescription. We believe consumers should benefit from the convenience and affordability of these

products and their access should not be hampered."

- 6) Prior Legislation: AB 283 (Koretz), of the 2005-06 Legislative Session, would have provided that the dispensing, sale, or distribution at retail of any compound, mixture, or preparation containing any detectable quantity of ephedrine, pseudoephedrine, or any derivative of ephedrine or pseudoephedrine shall be subject to specified additional requirements and require the retailer to store and display the product in a locked cabinet or as specified and the transaction would be required to be made by a retailer or employee of a retailer who meets specified requirements. AB 283 was gutted and never heard by the Senate Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California Attorney General's Office
California Correctional Supervisors Association
California Law Enforcement Telecommunications System Advisory Committee
California Narcotics Officers' Association
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
District Attorney for the City and County of San Francisco, Kamala Harris
Los Angeles County District Attorney's Office
Los Angeles County Police Chiefs Association
Riverside Sheriffs' Association

Opposition

Anthem Blue Cross
Association of California Life and Health Insurance Companies
Bayer Healthcare
California Association of Health Plans
California Attorneys for Criminal Justice
California Chamber of Commerce
California Grocers Association
California Healthcare Institute
California Healthcare Products Association
California Manufacturers and Technology Association
California Pharmacists Association
California Retailers Association
Health Net
Johnson & Johnson
Molina Healthcare of California
National Association of Chain Drug Stores
Rite Aid
Schering-Plough

Wyeth Pharmaceuticals

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