

- SUBJECT:** Requiring an online registry for sales of pseudoephedrine
- COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended
- VOTE:** 8 ayes — S. Miller, Fletcher, Beck, Burnam, Driver, Flynn, Peña, Walle
0 nays
1 absent — Mallory Caraway
- WITNESSES:** For — Carlos Gutierrez, Consumer Healthcare Products Association; *(Registered, but did not testify:* Troy Alexander, Texas Medical Association; Frank Calhoun, Johnson & Johnson; Katrina Daniels, Bexar County District Attorney’s Office; Darrell Davila, Tarrant County District Attorney; Michael Johnson, HEB; Amber Pearce, Pfizer, Inc.; Kevin Petroff, Harris County District Attorney’s Office; Michael Smith, Walgreens; Michael Wright, Texas Pharmacy Association) *(On committee substitute) (Registered, but did not testify:* Brad Shields, Texas Federation of Drug Stores; Rebecca Waldrop, sanofi-aventis US)
- Against — *(Registered, but did not testify:* Mark Kincaid, Texas Trial Lawyers Association)
- BACKGROUND:** Ephedrine, pseudoephedrine (PSE), and norpseudoephedrine are ingredients used in cold and allergy medications but can be diverted for use in the illegal manufacture of methamphetamine.
- In 2005, the 79th Legislature enacted HB 164 by Berman, which restricted the over-the-counter sales of products containing PSE. A person wishing to purchase an over-the-counter PSE must show a driver’s license, be at least 16 years of age, and sign for the purchase. The store must record the name of the customer, the date, and the item and number of grams of PSE purchased, and must keep these records for at least two years. The store is required to limit a customer’s single-transaction PSE purchase to either two packages or 6 grams.

DIGEST:

CSHB 1137 would require pharmacies to record PSE sales on a real-time electronic logging system to determine whether a person had exceeded the limits for PSE purchases. The bill also would change those limits to no more than 3.6 grams a day or no more than 9 grams in a 30-day period.

The real-time electronic logging system would be part of a national system capable of communicating with similar systems in other states. It would be provided to the stores for free. The system would have to meet security and information exchange standards of the FBI's Criminal Justice Information Services Division and the National Information Exchange Model.

The bill would require the store employee to record the purchaser's date of birth and address, the time of the purchase, and the type of identification and identification card number presented. The bill also would specify that only government-issued identification would be acceptable. The employee would have to submit the purchaser's information to the central registry and would not be allowed to sell to anyone who had exceeded the daily or monthly limits on PSE sales.

Employees could make a system override to complete an over-the-limit sale if they had a reasonable fear of imminent bodily injury or death from the person attempting to make the PSE purchase, but all such overrides would be recorded.

The system administrators would have to provide the Department of Public Safety with real-time access to the system's information and with records of over-the-counter PSE sales from any store in the state. A store that had the system in place for more than two years would have to destroy all paper records unless otherwise prohibited by law.

CSHB 1137 would permit a store to request a temporary 180-day exemption from obtaining the system if it continued to maintain paper recordkeeping. The bill also would allow paper recordkeeping if the system malfunctioned.

Other provisions would prohibit the release of any information collected through the system to anyone other than federal, state, or local law enforcement agencies and would prohibit the misuse of the information. The bill would exempt stores and their employees from civil liability if

information from the system was released, provided that negligence, recklessness, or willful misconduct was not involved.

CSHB 1137 would apply to PSE sales completed on or after January 1, 2012. Stores would not have to implement the system before January 1, 2012. The Texas State Board of Pharmacy and Department of State Health Services would have to provide the system administrators with the names, addresses, and phone numbers of all businesses selling over-the-counter PSE products by September 30, 2011.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1137 would help Texas join an effective, nationally based effort to prevent the illegal conversion of PSE into methamphetamine. Keeping accurate, online records on a statewide and regional basis would help curb the practice of “smurfing,” in which criminals make purchases at multiple stores to acquire illegal quantities of PSE. Electronic logging, unlike paper records, can thwart this practice.

The bill would allow the state to become part of the new National Precursor Log Exchange (NPLEx), which is funded by manufacturers of medicines containing PSE. Alabama, Arkansas, Florida, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Oklahoma, South Carolina, and Washington have adopted NPLEx. Three of those 12 NPLEx states border Texas, and two (Oklahoma and Arkansas) have been identified as among the top 10 states with the most meth labs. Joining the system would create a regional response to this problem.

Companies that operate several pharmacy locations in Texas, such as HEB and CVS, already are tied into the national tracking system. They have found that real-time electronic logging works to deter potentially illegal purchases. That effectiveness contrasts with maintaining unwieldy paper logbooks, which are rarely, if ever, audited by law enforcement agencies. Customers who feel that a sale has been rejected inaccurately will be able to contact the system administrators for information.

“Anti-smurfing” laws in other states have made law enforcement agencies more aware of the number of meth labs in their jurisdictions. As with many crime statistics, it is uncertain whether increased crime rates reflect increased illegal activity or merely better surveillance and detection of existing problems. Tracking the grams blocked from being sold illegally is

a more realistic measure of success than counting the number of meth labs identified. According to NPLeX records, more than 100,000 grams have been blocked from being sold illegally in eight states. About 25,000 retailers participate in the system. Overall, more than 500,000 grams of PSE were kept from possible diversion during the first quarter of this year.

CSHB 1137 would make Texas compliant with the new federal limits of no more than 3.6 grams of PSE per day or no more than 9 grams per 30 days. The electronic system also would be better than requiring prescriptions for PSE, because it would stop illegal use of PSE while making cold and allergy medicine readily available to those who needed it.

CSHB 1137 would help protect the security and privacy of people's health records. Law enforcement agencies would retain a secure portal for access to the information. In addition, federal law prohibits manufacturers' access to these records for any purpose.

OPPONENTS
SAY:

"Antismurfing" laws in other states have perversely corresponded with an increase in illegal activity as criminals have expanded their efforts to beat the system. The tracking systems tend to show that more meth labs exist than law enforcement agencies have estimated.

Computer information systems are not completely secure despite whatever technical protocols or laws are applied. The comptroller's recent unsecured release of sensitive information demonstrates the perils of keeping records of personal information online.

OTHER
OPPONENTS
SAY:

CSHB 1137 as drafted should provide a greater level of civil immunity for acts or omissions arising from compliance with the bill. The provisions should be revised.

NOTES:

The author is expected to offer a floor amendment that would revise the civil immunity provision and remove the reference to all occasions "arising" from application of the system in favor of a more limited standard.

The committee substitute differs from the original version of the bill by adding provisions that would define a real-time electronic logging system, allow a temporary exemption from joining the electronic logging system, add privacy protections, and change the standards for maintaining electronic and paper records after two years. The substitute also would

provide an exception to allow employees to override a rejection of a sale if they feared imminent bodily harm or death from the person trying to make a purchase.

The substitute also would delay the deadline for stores to join the system until January 1, 2012, rather than when the bill would take effect.

The companion bill, SB 913 by Estes, was reported favorably, as substituted, by the Senate Criminal Justice Committee on April 11 and has been placed on the April 21 Local and Uncontested Calendar.