

## BILL ANALYSIS

Senate Research Center  
79R122 PEP-D

S.B. 107  
By: Estes  
Health & Human Services  
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### AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently a person can purchase certain kinds of pseudoephedrine (PSE) over-the-counter without a prescription. Pseudoephedrine is the single ingredient that "cooks" of methamphetamine must have to produce methamphetamine.

As proposed, S.B. 107 prohibits over-the-counter sales of single-entity forms of PSE, but allows over-the-counter sales of liquid, liquid capsule, and gel capsule forms, in which PSE is not the only active ingredient. This law will not apply to a product dispensed or delivered by a pharmacist according to a prescription issued by a physician. An establishment caught selling or dispensing PSE in its single-entity form by any means other than through a pharmacy will be subject to monetary penalties based on the number and seriousness of the violations.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Health Services Council in SECTION 1 (Section 486.003, Health and Safety Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 6, Health and Safety Code, by adding Chapter 486, as follows:

#### CHAPTER 486. PSEUDOEPHEDRINE

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. DEFINITIONS. Defines "commissioner," "council," "department," "pseudoephedrine," and "sale."

Sec. 486.002. APPLICABILITY. Provides that this chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Sec. 486.003. RULES. Requires the State Health Services Council (council) to adopt rules necessary to implement and enforce this chapter.

[Reserves Sections 486.004-486.010 for expansion.]

##### SUBCHAPTER B. PROHIBITED SALES

Sec. 486.011. OVER-THE-COUNTER SALES OF PSEUDOEPHEDRINE. Prohibits a person from engaging in over-the-counter sales of pseudoephedrine.

[Reserves Sections 486.012-486.020 for expansion.]

##### SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. Authorizes the Department of State Health Services (department) to impose an administrative penalty on a person who sells pseudoephedrine in violation of this chapter.

Sec. 486.022. AMOUNT OF PENALTY. Sets forth the maximum amount of the penalty for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Sets forth the maximum amount of the penalty for a violation continuing or occurring on separate days. Sets forth the factors upon which the amount of the penalty is required to be based.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. Requires the department, if it initially determines that a violation occurred, to give written notice of the report by certified mail to the person. Sets forth the information the notice is required to include.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within a certain timeframe after receipt of the notice of violation and penalty, to accept, in writing, the determination and the recommended penalty of the department or make a request for a hearing, in writing, on the occurrence of the violation, the amount of penalty, or both. Requires the commissioner of state health services (commissioner), by order, to approve the determination if either the person accepts the determination and recommended penalty or the person fails to respond to the notice.

Sec. 486.025. HEARING. Requires the commissioner, if the person requests a hearing, to refer the matter of the State Office of Administrative Hearings, which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of the State Office of Administrative Hearings to conduct the hearing. Requires the administrative law judge to make findings of fact and conclusions of law and to promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of the proposed penalty.

Sec. 486.026. DECISION BY COMMISSIONER. Authorizes the commissioner, based on findings of fact, conclusions of law, and proposal for a decision, by order to find either that a violation occurred and impose a penalty, or to find that a violation did not occur. Requires the notice of the commissioner's order that is sent to the person to include a statement of the right of the person to judicial review of the order.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, within a certain timeframe after the date the order of the commissioner that imposes an administrative penalty becomes final, to either pay the penalty or file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review within the period prescribed by Section 486.027 to stay enforcement of the penalty either by paying the penalty to the court for placement in an escrow account or by giving the court a supersedeas bond approved by the court that is for the amount of the penalty and is effective until all judicial review of the commissioner's order is final. Alternatively, authorizes the person to request the court stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond, and sending a copy of the affidavit to the commissioner by certified mail.

(b) Authorizes the commissioner, if the commissioner receives a copy of the affidavit, to file with the court, within a certain timeframe after the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and requires the court to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 486.029. COLLECTION OF PENALTY. Authorizes the penalty to be collected if the person does not pay and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

Sec. 486.030. DECISION BY COURT. Authorizes the court, if it sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court to order that a penalty is not owed, if the court does not sustain the finding that a violation occurred.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, the appropriate amount plus accrued interest to be remitted to the person within a certain timeframe.

(b) Sets forth the rate at which interest accrues.

(c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 486.032. RELEASE OF BOND. Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond. Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 2. Requires the State Health Services Council to adopt rules to implement and enforce Chapter 486, Health and Safety Code, as added by this Act, not later than October 31, 2005.

SECTION 3. Effective date: September 1, 2005.