

BILL ANALYSIS

Senate Research Center

H.B. 1137
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current state and federal law, the amount of nonprescription ephedrine, pseudoephedrine, or norpseudoephedrine (PSE) that can be purchased is limited to prevent the diversion of PSE into methamphetamine production. The paper logs currently used by business establishments are no longer an effective tool to enforce those limits statewide and across state lines. A multi-state PSE electronic tracking/blocking system is a solution that will effectively stop individuals from purchasing legal limits of PSE and accumulating illegal quantities.

H.B. 1137 requires a business establishment before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to transmit the record to a real-time electronic logging system. The administration of the electronic logging system is free of charge to business establishments and law enforcement and law enforcement agencies and their personnel will have the sole right of access to the database.

H.B. 1137 amends current law relating to the transmission of records regarding over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine and a person's civil liability for certain acts arising from the sale of those products.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 486.001(a), Health and Safety Code, to define "real-time electronic logging system."

SECTION 2. Amends Section 486.014, Health and Safety Code, as follows:

Sec. 486.014. New heading: PREREQUISITES TO AND RESTRICTIONS ON SALE.

(a) Creates this subsection from existing text. Requires a business establishment that engages in those sales, before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, to:

(1) require the person making the purchase to display a driver's license or other form of government-issued identification containing the person's photograph and indicating that the person is 16 years of age or older, and sign for the purchase;

(2) make a record of the sale, including the name and date of birth of the person making the purchase, the address of the purchaser, the date and time of the purchase, the type of identification displayed by the person and the identification number, and the item and number of grams purchased; and

(3) transmit the record of sale as required by Section 486.0141.

(b) Creates this subsection from existing text. Prohibits a business establishment from selling to a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine:

(1) within any calendar day, more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances and

(2) within any 30-day period, more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Deletes existing text requiring a business establishment that engages in those sales, before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, to take actions necessary to prevent a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine from obtaining from the establishment in a single transaction more than two packages of those products, or six grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

SECTION 3. Amends Subchapter B, Chapter 486, Health and Safety Code, by adding Sections 486.0141, 486.0142, 486.0143, 486.0144, 486.0145, and 486.0146 to read as follows:

Sec. 486.0141. TRANSMISSION OF SALES INFORMATION TO REAL-TIME ELECTRONIC LOGGING SYSTEM. (a) Requires a business establishment that engages in ephedrine, pseudoephedrine, or norpseudoephedrines sales, before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, to transmit the information in the record made under Section 486.014(a)(2) to a real-time electronic logging system.

(b) Prohibits a business establishment, except as provided by Subsection (c), from completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine if the real-time electronic logging system returns a report that the completion of the sale would result in the person obtaining an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the amount described by Section 486.014(b), regardless of whether all or some of the products previously obtained by the buyer were sold at the establishment or another business establishment.

(c) Authorizes an employee of a business establishment to complete a sale prohibited by Subsection (b) by using the override mechanism described by Section 486.001(a)(6)(F) (relating to activation of an override mechanism) only if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain ephedrine, pseudoephedrine, or norpseudoephedrine.

(d) Requires the administrators of a real-time electronic logging system, on request of the Department of Public Safety of the State of Texas (DPS), to make available to the Department of State Health Services (DSHS), a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that is submitted by a business establishment located in this state.

Sec. 486.0142. TEMPORARY EXEMPTION. (a) Authorizes the State Board of Pharmacy (TSBP), on application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by Section 486.011 (Sales by Pharmacies), to grant that business establishment a temporary exemption, not to exceed

180 days, from the requirement of using a real-time electronic logging system under this chapter.

(b) Authorizes DSHS, on application by a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine in accordance with a certificate of authority issued under Section 486.012 (Sales by Establishments Other Than Pharmacies), to grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(c) Requires a business establishment granted a temporary exemption under this section to keep records of sales in the same manner required under Section 486.0143 for a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system.

(d) Provides that an exemption granted under this section does not relieve a business establishment of any duty under this chapter other than the duty to use a real-time electronic logging system.

Sec. 486.0143. WRITTEN LOG OR OTHER ELECTRONIC RECORDKEEPING. Requires the business, if the business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine experiences a mechanical or electronic failure of the real-time electronic logging system, to maintain a written record or an electronic record made by any means that satisfies the requirements of Section 486.014(a)(2), and enter the information in the real-time electronic logging system as soon as practicable after the system becomes operational.

Sec. 486.0144. ONLINE PORTAL. Requires the administrators of a real-time electronic logging system to provide real-time access to the information in the system to DPS if DSHS executes a memorandum of understanding with the administrators.

Sec. 486.0145. LIMITATION ON CIVIL LIABILITY. Provides that a person is not liable for an act done or omission made in compliance with the requirements of Section 486.014 or 486.0141.

Sec. 486.0146. PRIVACY PROTECTIONS. (a) Provides that the privacy protections provided an individual under 21 C.F.R. Section 1314.45 apply to information entered or stored in a real-time electronic logging system.

(b) Authorizes a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to disclose information entered or stored in a real-time electronic logging system only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

(c) Prohibits a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine from using information entered or stored in a real-time electronic logging system for any purpose other than for a disclosure authorized by Subsection (b) or to comply with the requirements of this chapter.

(d) Provides that notwithstanding Subsection (c), a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine or an employee or agent of the business establishment is not civilly liable for the release of information entered or stored in a real-time electronic logging system unless the release constitutes negligence, recklessness, or wilful misconduct.

SECTION 4. Amends Section 486.015, Health and Safety Code, as follows:

Sec. 486.015. MAINTENANCE OF RECORDS. (a) Requires a business establishment, except as provided by Subsection (b), to maintain each record made under Section 486.014(a)(2), rather than Section 486.014(2), until at least the second anniversary of the date the record is made and to make each record available on request by DSHS or any local, state, or federal law enforcement agency, including the United States Drug Enforcement Administration, rather than on request by DSHS or DPS.

(b) Provides that Subsection (a) does not apply to a business establishment that has used a real-time electronic logging system for longer than two years.

(c) Requires a business establishment that has used a real-time electronic logging system for longer than two years to destroy all paper records maintained under this section unless the destruction is otherwise prohibited by law.

SECTION 5. Requires TSBP and DSHS, not later than September 30, 2011, to provide to the administrators of any real-time electronic logging system described by Subchapter B, Chapter 486, Health and Safety Code, as amended by this Act, the names, addresses, and phone numbers of all business establishments engaging in over-the-counter sales of products containing ephedrine, pseudoephedrine, and norpseudoephedrine.

SECTION 6. (a) Makes application of the changes in law made by this Act prospective to January 1, 2012.

(b) Provides that a business establishment is not required to use a real-time electronic logging system required by Subchapter B, Chapter 486, Health and Safety Code, as amended by this Act, before January 1, 2012.

SECTION 7. Effective date: September 1, 2011.