

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 1, 2003

TO: Honorable Jaime Capelo, Chair, House Committee on Public Health

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB340 by Uresti (Relating to the regulation of dextromethorphan; providing administrative, civil, and criminal penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB340, As Introduced: a negative impact of (\$89,123) through the biennium ending August 31, 2005.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2004	(\$42,316)
2005	(\$46,807)
2006	(\$46,807)
2007	(\$46,807)
2008	(\$46,807)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Change in Number of State Employees from FY 2003
2004	(\$42,316)	1.0
2005	(\$46,807)	1.0
2006	(\$46,807)	1.0
2007	(\$46,807)	1.0
2008	(\$46,807)	1.0

Fiscal Analysis

The bill would amend the Health and Safety Code, by adding Chapter 486, to regulate the sale of dextromethorphan. The bill would establish civil, criminal and administrative penalties.

Dextromethorphan is a cough suppressant found in many over-the-counter and prescription drug products. The bill would require businesses that sell products containing dextromethorphan to display signs which state that it is unlawful for persons to sell products containing this drug to persons under 18 years of age. The bill would also require businesses to restrict access to products containing dextromethorphan by storing them in a place where patrons can only access the products with the assistance of an employee of the business.

The bill would establish civil penalties of \$50 for a first violation and \$100 for each subsequent violation of the bill's provisions. A third violation would permit the court to enjoin a business from

selling products containing dextromethorphan for up to two years. A district or county attorney of the county in which the violation occurs may request that the Attorney General file suit against a business establishment for the issuance of a warning, the collection of civil penalty, or the issuance of an injunction. Provisions of the bill would make it a criminal offense (Class B misdemeanor) for persons under the age of 18 to possess dextromethorphan, with the intent to ingest it in a manner contrary to the directions for use on the label. Delivery of this drug to a minor, failure to post a warning sign by a business, and offering to sell dextromethorphan are also established as criminal misdemeanor offenses.

The Act takes effect September 1, 2003.

Methodology

The Department of Health (TDH) assumes that enforcement activities related to non-compliance by grocery stores, convenience stores, pharmacies and other retail locations would require 2,156 hours per year. This is based on the assumption from the TDH Retail Foods Division that of the estimated 26,700 firms in Texas that would sell dextromethorphan-containing products, 4 percent or 1,068 would be non-compliant. Each initial complaint would require 2 hours of staff time (1,068 x 2 hours = 2,136 hours), with 10 percent causing a second complaint (10 x 2 hours = 20 hours) for a total of 2,156 hours. This is the equivalent of one FTE. The FTE is assumed at 75 percent for fiscal year 2004, assuming hiring time and full time for fiscal years 2005-2008.

TDH estimates the one FTE, an Environmental Specialist III, would gather information on complaints or violations, enter information into a database, and issue letters. TDH assumes the actual inspection would be assigned to agency staff in either the Region or Central office. The costs for this FTE includes salary, benefits, operating expenses (office equipment), and rental costs for leased office space and would be \$41,016 for fiscal year 2004 and \$46,807 for fiscal year 2005.

Technology

The cost estimate assumes one desktop computer for use by the FTE at a cost of \$1300 in fiscal year 2004.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 360 State Office of Administrative Hearings, 501 Department of Health, 694 Youth Commission, 696 Department of Criminal Justice

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