

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, February 23, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Smyser, Heider, Vick, Nuxoll, Bock, and Schmidt

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

MINUTES: **Chairman Lodge** called the meeting to order at 3:05 p.m.

MINUTES APPROVAL **Senator Vick** moved, seconded by **Senator Bock**, that the minutes of January 17, 2012 be approved. The motion carried by **voice vote**.

MINUTES APPROVAL **Senator Smyser** moved, seconded by **Senator Bock**, that the minutes of February 6, 2012 be approved. The motion carried by **voice vote**.

S 1309 **Relating to Retail Sales of Pseudoephedrine Products. Vice Chairman Broadsword**, District 2, stated this is a bill designed to keep people from purchasing illegal amounts of Pseudoephedrine (PSE) for purposes of methamphetamine production. Members of her local law enforcement agency requested she sponsor this legislation related to getting a real time, online tracking program in place for PSE sales. They expressed frustration at the cost and manpower time involved in going from pharmacy to pharmacy to pick up copies of handwritten logs that the current law requires. She stated they provided evidence of logs with the same names on the same dates for several different pharmacies as proof that buyers purchase PSE from several different pharmacies in a short period of time.

Vice Chairman Broadsword noted that the Sheriff's Association, the Police Chief's Association, the Idaho State Police, the Board of Pharmacy, the Retailer's Association and the Idaho Pharmacy Association all support this legislation.

Vice Chairman Broadsword advised that under the bill the Board of Pharmacy (BOP) will contract for an online tracking system which will be used by pharmacies to track sales of PSE. The suppliers of PSE products have an agreement to fund the online tracking program and there is no cost to the state or to the pharmacy for this tracking system. The system will indicate when an individual has purchased the maximum legal limit of PSE and will block the sale, giving the purchaser a phone number to call for an explanation of why the sale is blocked. She advised that there is one major supplier of an online program called NPLeX, developed by Appriss, which is now used by 17 states and an additional 4 states have legislation pending. She stated the legislation allows pharmacies the option of asking for a waiver from BOP if they have no access to the internet.

TESTIMONY: **Daniel Quinonez**, on behalf of the Consumer Healthcare Products Association (CHPA), spoke **in support of S 1309**. He stated CHPA is the leading manufacturer of over the counter medicines. He advised federal law limits PSE purchases to 3.6 grams per day and 9 grams per month and mandates that pharmacies use paper logs to track sales. The use of paper logs is not effective or efficient for either the pharmacy or law enforcement. The NPLeX system is an industry solution requiring identification that will be scanned by the pharmacy and will block the sale if the

daily or monthly PSE purchase limits have been reached. Attempted sales by the individual at other pharmacies will also be blocked. He advised this will not be 100 percent effective in stopping Methamphetamine use, as 80 percent comes from Mexico, but this can help us control what happens in our community. Law enforcement will be given a pass code enabling them to access the system. He stated Methamphetamine labs are a great risk to law enforcement personnel and this information will give them an awareness of a potential Methamphetamine lab before entering a building.

Senator Bock asked if raw materials used in Mexico for the manufacture of Methamphetamine come from the U.S. **Mr. Quinonez** responded that they come mostly from Asia, China and other countries. **Senator Bock** noted that this is a relatively intrusive way of monitoring PSE use considering much of the drug comes from outside the U.S. **Mr. Quinonez** indicated that federal law mandates photo ID for purchase and a logbook record by the pharmacy; this electronic system speeds up the process.

Responding to a question from **Senator Schmidt** regarding the funding mechanism, **Mr. Quinonez** advised funding is provided by the manufacturers of PSE to the company maintaining the database in Kentucky and there would be no cost to taxpayers. He further advised that neither his organization nor the companies it represents have access to this data. They do, however, get a monthly report on how many grams have been blocked.

Senator Darrington asked how long the data is maintained in the system and whether sufficient security measures are in place to keep out hackers. **Mr. Quinonez** indicated the Company works with Homeland Security, is audited by the FBI, and follows the highest protocols in terms of protection and use. Info is held for at least one year and up to 2 years. **Senator Heider** asked if any surrounding states are among the 20 states that use the system now. **Mr. Quinonez** identified Washington, the Dakotas, and indicated Montana and Nevada are working on it. **Vice Chairman Broadword** indicated Utah requires a prescription for PSE, so they do not have the problem.

TESTIMONY:

Mark Johnston, Director, Idaho Board of Pharmacy (BOP) advised that BOP supports S 1309 and thanked **Vice Chairman Broadword** for allowing BOP to be an active participant in drafting this legislation. He stated BOP fully accepts the responsibility that the bill places on it, including implementation of the program and accepting applications for exception.

Senator Darrington asked if BOP will be promulgating rules as to how the data is kept. **Mr. Johnston** indicated there is rulemaking authority within the bill. **Senator Vick** asked what information must be collected in this process and how much 3.6 grams would be. **Mr. Johnston** indicated they would collect the individual's name, address, signature (either written form or electronically stored), type of photo ID presented, number on ID and issuer, date and time of sale – this can all be done by scanning the photo ID. He advised that 3.6 grams would be 120 tablets.

Senator Heider asked why law enforcement would be involved if the system itself controls the sale and the volume, as no law would be broken in an attempt to purchase. **Mr. Johnston** indicated that if there are continuous blocked sales that information would be valuable to law enforcement, but ultimately the hope is that this will curtail a lot of illegal activity.

TESTIMONY: **Shane Hight**, Detective, Bonner County Sheriff Department, spoke **in support** of **S 1309**. He has worked narcotics for nine years and has seen different types of Meth labs and the effects on children in the homes. He noted a recent case where six small children were in the home and the investigation took nine months to complete. He stated the NPLeX system would shorten investigation time, tie law enforcement together, and be less intrusive on the pharmacies.

Senator Schmidt asked if it is **Mr. Hight's** experience that those who are cooking Methamphetamine get PSE locally. He indicated they do, but they also travel to surrounding counties and states. **Senator Bock** asked what quantity of PSE is necessary to make cooking Methamphetamine economically viable. **Mr. Hight** indicated this problem is addict driven and there are a lot of one-pot cooks; they purchase just enough to use and sell so they can purchase more PSE and they are constantly in business. He stated those are the ones who are dangerous because they have chemicals in their houses all the time. Those who are going to several pharmacies to purchase large amounts are more profit driven.

TESTIMONY: **Barbara Jordan**, representing the Idaho Trial Lawyers Association (ITLA), stated ITLA takes **no position** on **S 1309**. It does take exception to Section 37-3303A(6)(a) related to civil damage liability. She pointed out the inconsistency of requiring the pharmacies to put the system in and utilize the system and then basically say that they could be negligent in using that system, but there is no penalty for that.

Senator Bock asked if ITLA was also concerned about section (6)(b). **Ms. Jordan** indicated they are not; (6)(b) helps the pharmacy. If there is a breach to the system or the system fails, they are not responsible and that is very reasonable.

TESTIMONY: **Jim Tibbs**, Retired Law Enforcement Officer, Idaho's first Drug Czar, and currently a member of the Idaho Criminal Justice Commission, spoke **in support** of **S 1309**. He stated this legislation does not gather any additional information than what is already required and has the impact of efficiency and effectiveness, while allowing for a waiver if a pharmacy cannot meet the technical requirements.

Senator Darrington discussed the provisions in the bill that make it optional for the pharmacy to participate and standard of liability clause objected to by the ITLA. **Mr. Tibbs** indicated there are provisions for waivers for the pharmacy if there is a hardship but they would need to apply for that waiver. Related to liability, he stated that from a practical standpoint the statute has some protections against very innocent actions, but in the case of gross negligence there would be some liability on the part of the pharmacy.

TESTIMONY: **Elizabeth Criner**, representing Pfizer Pharmaceuticals, spoke **in support** of **S 1309**. She advised that Pfizer manufacturers allergy over-the-counter medications with PSE components and participates in the NPLeX system funding. She stated **S1309** is a great step in achieving the challenging balance of making allergy and cold relief medications available for appropriate use and controlling the abuse of the drug.

Senator Schmidt asked what amount Pfizer contributes to NPLeX. **Ms. Criner** indicated she did not have those figures, but advised all manufacturers of generic or brand over-the-counter products containing PSE help contribute.

TESTIMONY: **Mike Kane**, representing Idaho Sheriff's Association and Appriss, spoke in support of **S 1309**. He reviewed the history of laws related to the control of PSE, and stated it is a very effective allergy and cold medicine. It is not the intent of this legislation to block the use, but control the dangerous home cooking of Methamphetamine. He stated the paper logbook served its purpose but people have found a way around it by visiting multiple pharmacies. The NPLeX system is no cost to the pharmacy, it is fully funded by the manufacturers of PSE, and was created by Appriss, a company out of Louisville, Kentucky, which maintains a computer database of info collected from the pharmacies. Data is kept according to federal law for 2 years and then deleted. He advised that 3.6 grams equals a 15 day supply. With regard to the questions on the immunity clause, he noted that this bill requests that the pharmacy industry partner with the State of Idaho and local law enforcement by helping stop Meth labs. This gives the pharmacy the same protection as the Idaho Tort Claims Act which is designed to protect government from being sued every time they do something someone does not like.

Senator Bock stated he is uncomfortable with the liability section and asked if this bill was drafted by **Mr. Kane's** client. **Mr. Kane** advised that it is actually a model bill used by the other states participating in the program.

Senator Schmidt asked if financial information is available for Appriss. **Mr. Kane** indicated it is a private, for profit, company and is not traded on the NYSE. **Senator Schmidt** commented that it appears this is a good real time tracking product, and asked why it is not used for prescription narcotics. **Mr. Kane** stated that may be in the future. He advised Appriss is a very vibrant corporation and is consistently seeking new ways of using this technology; right now they are focusing on PSE.

Senator Darrington commented that big chains will jump on this, other independents may say they are sick of the government, don't want to go to the BOP for a waiver, and don't want a computer in the store, and they will just continue to keep the paper log. He asked if this legislation is adequate to enjoin those individuals in court. **Mr. Kane** responded that many of the big chains are already on this on their own nickel. As far as enjoining them and forcing this down their throats, that is not what we are talking about. If they want to keep the paper logs that will be allowed.

Vice Chairman Broadsword thanked the Committee and related that because of a recent cold she went to the pharmacy and was advised to take Sudafed and other cold remedies. She produced her driver's license and purchased Sudafed. The pharmacy scanned her license and she signed their logbook. She stated that under this legislation the procedure would be the same, except the information would be sent to the computer database. She advised that S 1309 mirrors federal law and that any pharmacy violating the provisions of the law is subject to federal penalties. The BOP has authority to discipline any pharmacist or pharmacy not following Board Rules. So even if there is no civil penalty they will be held liable by the Board for any infraction that the Board feels is a violation. She stated this legislation will stop people who abuse the drug, but allow those who need it access.

RULE 39H DECLARATION: **Senator Smyser** provided **Chairman Lodge** with written notice and declared to the Committee, pursuant to Senate Rule 39H, that she may have a possible conflict with this legislation, but does intend to vote.

MOTION: **Senator Heider** moved, seconded by **Senator Vick**, that the Committee send **S 1309** to the floor with a do pass recommendation.

SUBSTITUTE MOTION: **Senator Bock** expressed concern about the liability language in the bill and made a substitute motion that the Committee send **S 1309** to the 14th Order for possible amendment. The **motion died** for lack of a second.

**VOTE ON
ORIGINAL
MOTION:**

Chairman Lodge called for a vote on the original motion that the Committee send **S 1309** to the floor with a do pass recommendation. The motion carried by **voice vote**.

ADJOURN:

Chairman Lodge thanked those testifying on this legislation and adjourned the meeting at 4:02 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary