




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 648 (as enrolled)  
Senate Bill 649 (as enrolled)  
Senate Bill 650 (as enrolled)  
Senate Bill 651 (as enrolled)  
Senate Bill 652 (as enrolled)  
Senate Bill 698 (as enrolled)  
Senate Bill 777 (as enrolled)

**PUBLIC ACT 307 of 2003**  
**PUBLIC ACT 310 of 2003**  
**PUBLIC ACT 308 of 2003**  
**PUBLIC ACT 309 of 2003**  
**PUBLIC ACT 312 of 2003**  
**PUBLIC ACT 311 of 2003**  
**PUBLIC ACT 313 of 2003**

Sponsor: Senator Bruce Patterson (Senate Bill 648)  
Senator Patricia L. Birkholz (Senate Bill 649)  
Senator Alan L. Cropsy (Senate Bill 650)  
Senator Alan Sanborn (Senate Bill 651)  
Senator Ron Jelinek (Senate Bill 652)  
Senator Michael D. Bishop (Senate Bill 698)  
Senator Tom George (Senate Bill 777)

Senate Committee: Judiciary  
House Committee: Criminal Justice

Date Completed: 6-17-04

### **RATIONALE**

The manufacture and use of methamphetamine (meth) is on the rise in Michigan, particularly in rural areas in the southern and southwestern parts of the State. While the situation in Michigan has not yet reached the severity that states like Iowa, Nebraska, Idaho, and Washington have experienced, some people believe that a quick and early response to some of the problems surrounding meth use and production will help to blunt the spread of the drug in Michigan.

Under the Public Health Code, methamphetamine is classified as a Schedule 2 controlled substance. This means that it has a high potential for abuse; if abused, it may lead to severe psychic or physical dependence; and it has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions. The National Drug Intelligence Center (NDIC) of the U.S. Justice Department reports that methamphetamine (also known as "speed", "crank", or "ice", among other street names) appeals to drug abusers because it creates a sense of enhanced alertness, euphoria, and increased energy; over time, however, unsupervised use can lead to nervousness and irritability, extreme paranoia, prolonged psychosis, hallucinations, insomnia, brain damage, and increased risk of stroke and heart failure.

Methamphetamine is manufactured with common chemicals in clandestine laboratories. These labs can be set up with simple household items, such as mason jars, coffee filters, hot plates, pressure cookers, plastic tubing, and gas cans. Meth can easily be "cooked" from ingredients that may be purchased legally or stolen. According to the Office of Drug Control Policy in the Michigan Department of Community Health (DCH), although there are several production methods, meth labs discovered in Michigan typically have used a manufacturing process that involves extracting pseudoephedrine or ephedrine from cold tablets. Other ingredients used in this process include anhydrous ammonia, which is a nitrogen-based fertilizer. Reportedly, this substance increasingly is being stolen from farmers' fertilizer tanks or agricultural sales and storage facilities.

Methamphetamine production can be very dangerous and the chemicals used in its manufacture can be hazardous. Solvents and fumes are flammable and gases formed in the process can be deadly. The lab operations also produce highly toxic waste, which can pollute dwellings, soil, and water supplies. Waste products include corrosive liquids, acid vapors, and heavy metals. Reportedly, for every pound of methamphetamine, meth labs produce five to six pounds of toxic waste, which almost always is illegally dumped.

It was suggested that various Michigan statutes be revised to prohibit the possession of large amounts of pseudoephedrine, prohibit the possession or transport of anhydrous ammonia except in legally approved containers, increase criminal penalties for the operation of methamphetamine labs, and require inspections for environmental contamination of meth lab locations.

## **CONTENT**

**The bills amended various statutes to do all of the following:**

- Require a law enforcement agency to notify the Housing Law enforcing agency and the Department of Environmental Quality (DEQ) regarding potential contamination of property or a dwelling that has been the site of illegal drug manufacturing.**
- Require the DEQ to determine whether a site of illegal drug manufacturing is likely to be contaminated and pose a hazard to occupants.**
- Prescribe a maximum penalty of 20 years and/or \$25,000 for owning or using a vehicle, building or place, owning or possessing chemical or laboratory equipment, or providing any chemical or laboratory equipment to another in order to manufacture methamphetamine.**
- Include pseudoephedrine in provisions that prohibit the possession of ephedrine, increase the prohibited level from more than 10 grams to more than 12 grams, and specify some exceptions to the prohibition.**
- Prohibit and prescribe felony penalties for transporting or possessing anhydrous ammonia in a container other than one approved by law or tampering with a lawful container.**
- Include the new felonies in the sentencing guidelines.**

Senate Bill 648 amended the Housing Law of Michigan; Senate Bills 649 and 650 amended the Public Health Code; Senate Bill 652 amended the Michigan Penal Code; and Senate Bills 651, 698, and 777 amended the Code of Criminal Procedure.

The bills took effect on April 1, 2004.

## **Senate Bill 648**

The bill requires a State or local law enforcement agency to notify the Housing Law enforcing agency and the DEQ regarding the potential contamination of any property or dwelling that is or has been the site of illegal drug manufacturing. The law enforcement agency must post a written warning on the premises stating that potential contamination exists and may constitute a health or safety hazard to occupants.

Within 14 days after receiving notification, or as soon as practically possible, the DEQ, in cooperation with the law enforcement agency, must review information received from the law enforcement agency, emergency first responders, or hazardous materials team that was called to the site. The DEQ also must determine whether the premises are likely to be contaminated and whether the contamination may constitute a health or safety hazard to the occupants of the premises. The fact that property or a dwelling has been used for illegal drug manufacturing must be treated by the DEQ as prime facie evidence of likely contamination that may constitute a health or safety hazard to occupants.

If the DEQ does determine that contamination is likely, the Housing Law enforcing agency must order the property or dwelling to be vacated until the owner establishes that the property is decontaminated or the risk of likely contamination ceases to exist.

The bill states that it does not preclude a local health department from exercising its powers or duties under the Public Health Code. If the DEQ determines that there is contamination at the site of illegal drug manufacturing, however, that determination takes precedence over a local health department's order to the contrary.

The bill requires the DEQ to promulgate rules and procedures necessary to implement the bill.

## **Senate Bill 649**

The Public Health Code, under provisions enacted by Public Act 314 of 2000, prohibits a person from doing any of the following in violation of Section 7401 or Section 7402 of the Code:

- Owning, possessing, or using a vehicle, building, structure, place, or area that he or she knows or has reason to know is to be used as a location to manufacture a controlled substance or a counterfeit substance or controlled substance analogue.
- Owning or possessing any chemical or any laboratory equipment that the person knows or has reason to know is to be used for the purpose of manufacturing a controlled substance or a counterfeit substance or controlled substance analogue.
- Providing any chemical or laboratory equipment to another person knowing or having reason to know that the other person intends to use that chemical or equipment for the purpose of manufacturing a controlled substance or a counterfeit substance or controlled substance analogue.

(Section 7401 prohibits a person from manufacturing, possessing with intent to deliver, creating, or delivering a controlled substance. Section 7402 prohibits a person from creating, manufacturing, delivering, or possessing with intent to deliver a counterfeit substance or a controlled substance analogue intended for human consumption.)

A person who violates any of these provisions is guilty of a felony, punishable by imprisonment for up to 10 years, a fine of up to \$100,000, or both. The penalty is imprisonment for up to 20 years, a maximum fine of \$100,000, or both, for the following violations:

- A violation committed in the presence of a minor.
- A violation that involves the unlawful generation, treatment, storage, or disposal of a hazardous waste.
- A violation that occurs within 500 feet of a residence, business establishment, school property, or church or other house of worship.

If a violation involves the possession, placement, or use of a firearm, or any other device designed or intended to be used to injure another person, it is punishable by imprisonment for up to 25 years, a fine of up to \$100,000, or both.

Further, a person 18 years old or older who commits a violation within 1,000 feet of a

public or private park is subject to an additional term of imprisonment of up to two years.

Under Senate Bill 649, a violation that involves or is intended to involve manufacturing a substance that contains any quantity of methamphetamine, including its salts, stereoisomers, and salts of stereoisomers, is punishable by up to 20 years' imprisonment, a maximum fine of \$25,000, or both.

### **Senate Bill 650**

The Public Health Code previously prohibited a person from possessing more than 10 grams of ephedrine, alone or in a mixture. A violation is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. The bill added possession of pseudoephedrine to that provision and raised the prohibited level to more than 12 grams.

The violation does not apply to any of the following:

- A person who possesses ephedrine pursuant to a license issued by the State or the United States to manufacture, deliver, dispense, possess with intent to manufacture or deliver, or possess a controlled substance, prescription drug, or other drug.
- A person who possesses ephedrine for retail sale pursuant to a sales tax license.
- A person who possesses ephedrine in the course of his or her business of selling or transporting ephedrine to a person described above.
- A person who, in the course of his or her business, stores ephedrine for sale or distribution to a person described above.
- An individual who possesses ephedrine pursuant to a prescription.

The bill includes pseudoephedrine in those exceptions. The bill also excludes both of the following from the prohibition:

- Any product that the State Board of Pharmacy, upon a manufacturer's application, exempts from the prohibition because it has been formulated in a way that effectively prevents the conversion of the ephedrine or pseudoephedrine into methamphetamine.
- Any pediatric product primarily intended for administration to children under 12 years old according to label instructions.

### **Senate Bill 651**

The bill revised the sentencing guidelines listing for possession of more than 10 grams of ephedrine. The bill refers to possession of 12 grams or more and includes pseudoephedrine in that provision. The offense remains a Class G controlled substances felony with a statutory maximum penalty of two years' imprisonment.

The bill was tie-barred to Senate Bill 650.

### **Senate Bill 652**

The bill prohibits transporting or possessing anhydrous ammonia in a container other than "a container approved by law" and tampering with a container approved by law. A violation is a felony punishable by up to four years' imprisonment, a maximum fine of \$5,000, or both.

"Container approved by law" means a container that was manufactured to satisfy the requirements for storing and handling anhydrous ammonia pursuant to R 408.17801 of the Michigan Administrative Code or its successor rule. (That rule adopts by reference the provisions of Federal Occupational Safety and Health Administration regulations pertaining to the design, construction, location, installation, and operation of anhydrous ammonia systems (29 CFR 1910.111).)

### **Senate Bill 698**

Under the bill, operating or maintaining a controlled substance laboratory involving methamphetamine is listed in the sentencing guidelines as a Class B controlled substances felony with a statutory maximum penalty of 20 years' imprisonment, as provided by Senate Bill 649.

Senate Bill 698 was tie-barred to Senate Bill 649.

### **Senate Bill 777**

The bill includes in the sentencing guidelines unlawfully possessing or transporting anhydrous ammonia or tampering with containers (as Senate Bill 652 prohibits). The offense is listed as a Class F felony against the public safety with a statutory maximum sentence of four years' imprisonment.

Senate Bill 777 was tie-barred to Senate Bill 652.

MCL 125.485a (S.B. 648)  
333.7401c (S.B. 649)  
333.17766c (S.B. 650)  
777.13n (S.B. 651)  
750.502d (S.B. 652)  
777.13n (S.B. 698)  
777.16x (S.B. 777)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Methamphetamine is a dangerous and highly addictive drug that has led to America's first major homegrown drug epidemic. Meth has been compared with crack cocaine because of its highly addictive nature and low cost. A person can ingest meth by swallowing, inhaling, injecting, or smoking, and the typical high is said to last at least 12 hours. The manufacture and use of methamphetamine have been a major problem in states to Michigan's west in recent years. According to a July 2002 report from the DCH Office of Drug Control Policy and the Michigan Department of State Police ("Michigan Methamphetamine Control Strategy"), 80% of the Federal drug cases in Nebraska involved meth; Spokane County, Washington, in 1999 had more arrests for meth than for cocaine, crack, and heroin combined; in Idaho, nine out of 10 drug cases handled by the state police were meth-related; and Iowa uncovered 803 meth labs in 1999, up from just two in 1994. According to the report, in 1999, nearly 20% of new jail inmates in Spokane County, Washington, tested positive for methamphetamine, and 14% of the people arrested for any crime in Des Moines, Iowa, tested positive for meth.

In Michigan, only six meth labs were found and investigated in 1996, but 120 labs were seized in 2001. That number was expected to exceed 300 by 2003. Of the 120 labs seized in 2001, 80 were located in just six counties in the southwestern corner of Michigan. Meth labs increasingly are being found in mid-Michigan, too, and Jackson County reportedly is now second behind Allegan County in the number of meth labs busted.

The costs of numerous meth labs and increased methamphetamine addiction go far beyond investigating and seizing illegal drug labs. Meth use and production can lead to an increase in other types of crimes, as users are considered more likely to commit acts of violence and property offenses either because they are high or in order to satisfy their addiction. The rise in these other crimes leads to increased demands on law enforcement and corrections budgets. According to the Allegan County prosecutor, that county never had a jail crowding problem until meth use and production became prevalent there. Also, Allegan County apparently has seen steady increases in incidents of domestic violence and theft over the last few years. In addition to committing crimes, meth users can develop serious physical and mental health problems, ranging from alarming weight loss, skin infections, and tooth loss to paranoia, hallucinations, and depression. There is a high cost to treating these users for their addictions and their accompanying health problems.

Although Michigan already had strong penalties for the manufacture, delivery, and possession of meth, the bills offer law enforcement more tools to thwart the spread of methamphetamine manufacture in clandestine labs. The bills also should provide a greater deterrent to meth use and production.

#### **Supporting Argument**

Public Act 314 of 2000 amended the Public Health Code to prescribe felony penalties for owning or using a vehicle, building, or place, owning or possessing chemicals or laboratory equipment, or providing any chemical or laboratory equipment to another in order to manufacture a controlled substance or controlled substance analogue. Generally, a violation is punishable by up to 10 years' imprisonment and/or a maximum fine of \$100,000. Since the presence and operation of methamphetamine labs are on the rise in at least one part of the State, owning, operating, or maintaining meth labs should be dealt with more severely, in order to deter their spread throughout Michigan. Under Senate Bill 649, a violation of the drug lab prohibition that involves or is intended to involve methamphetamine is punishable by up to 20 years' imprisonment.

#### **Supporting Argument**

Pseudoephedrine is the artificial version of

ephedrine, which is a derivative of the Chinese herb Ma Huang. Ephedrine can be found in a wide variety of products marketed as energy boosters and weight-loss aids that are distributed in drug stores, gas stations, and health food stores. Truck drivers and students reportedly use those products to stay awake and alert; body builders have been known to use them to increase muscle mass; and, since ephedrine suppresses the appetite, many dieting aids contain ephedrine. In addition, ephedrine and pseudoephedrine can act as a bronchial dilator, and pseudoephedrine is the active ingredient in most prescription and over-the-counter (OTC) medications for the treatment of such common maladies as asthma, allergies, and nasal congestion.

Despite their widespread and common usage, ephedrine and pseudoephedrine can result in serious, life-threatening conditions, especially if combined with caffeine or alcohol, and even when used in low doses by healthy individuals. The United States Food and Drug Administration (FDA) has said that ephedrine alkaloids are amphetamine-like compounds that have a powerful stimulant effect on the central nervous system. Reported adverse effects of ephedrine and pseudoephedrine include insomnia, headaches, nausea and vomiting, kidney problems, heart irregularities, seizures, strokes, heart attacks, and even death. The FDA reportedly has received hundreds of reports of adverse effects and dozens of reports of death associated with ephedrine.

In recent years, many states, including Michigan, have banned or strictly regulated the sale and use of products containing ephedrine. Public Act 38 of 1994, for instance, added a provision to the Public Health Code to prohibit the possession of more than 10 grams of ephedrine, with certain exceptions, and Public Act 144 of 1999 included ephedrine as a Schedule 5 controlled substance, except as used in small doses in legitimate products. By including pseudoephedrine in the ban against possession of certain amounts of ephedrine, Senate Bill 650 recognizes that large amounts of pseudoephedrine can be just as harmful as ephedrine. Also, since pseudoephedrine derived from OTC medications is an important ingredient in the production of methamphetamine, its possession and use should be tightly regulated. Prohibiting the possession of significant amounts of pseudoephedrine gives law enforcement

authorities one more option to combat meth manufacture and use.

In addition, testimony before the Senate Judiciary Committee revealed that purchasing four, 96-tablet packages of a cold medication such as Suda-Fed would result in the buyer's being in violation of the bill's prohibition against pseudoephedrine possession, if possession of more than 10 grams were banned. Buying an OTC medication in that quantity might be reasonable for a large family or for someone who suffers from chronic allergies or other sinus problems. To accommodate such a purchase, the bill set the prohibited amount of ephedrine and pseudoephedrine at more than 12 grams. Also, some products reportedly are formulated in a manner that effectively prevents the conversion of pseudoephedrine into methamphetamine. The bill excludes those products and products primarily intended for pediatric use from the prohibition.

#### **Supporting Argument**

Anhydrous ammonia is a nitrogen and hydrogen combination that is useful as a fertilizer in many farming operations. The volatile substance is packaged and transported in tanks that must meet Federal health and safety regulations. Typically, anhydrous ammonia is stored and transported in, and applied from agricultural "nurse tanks" that rest on trailers that can be towed by a tractor or other farm vehicle into the field. Anhydrous ammonia also is a key ingredient in producing methamphetamine. Increasingly, especially in southwestern Michigan, people have stolen or vandalized these nurse tanks in order to remove the anhydrous ammonia for use in manufacturing meth. By establishing a felony penalty for the possession or transport of anhydrous ammonia in containers not approved by law, and for tampering with anhydrous ammonia containers, Senate Bill 652 will aid law enforcement efforts to quash meth labs in Michigan.

#### **Supporting Argument**

The illegal production of methamphetamine is dangerous to those who come into contact with or get close to the operations. Meth labs also pose an environmental hazard. Gases and solvents used in the production process are highly flammable and inhaling them can cause serious health problems and even death. It has been estimated that the

production of methamphetamine generates toxic waste in an amount that is five-to-six times the quantity of the drug produced. Often, this waste is left in public places or abandoned buildings or vehicles where the labs have been set up, or it is dumped on the ground, in waterways, or down sewers, contaminating soil, recreational waters, and sources of drinking water. Exposure to these contaminated sites can be very dangerous. Indeed, a sheriff in another state who dismantled a meth lab without protective gear or proper procedures reportedly is now terminally ill from exposure to the toxic waste.

In order to ensure that dangerous illegal drug lab sites are secured and properly decontaminated, Senate Bill 648 requires law enforcement agencies to notify the Housing Law enforcing agency and the DEQ of the possible contamination. If the DEQ determines that the premises are likely to be contaminated and the contamination may constitute a health and safety hazard to the occupants, the Housing Law enforcing agency must order the property to be vacated until it is decontaminated or the risk of contamination ceases to exist.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

##### **Senate Bill 648**

The bill will cost the Department of Environmental Quality an indeterminate amount. The DEQ will incur costs for staff time and resources for the review of information related to sites of illegal drug manufacturing. The costs will depend on the number of sites and the complexity of the cases.

##### **Senate Bills 649 and 698**

The bills will have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many new offenders will be convicted or how many offenders who previously would be convicted of other substance abuse offenses will be convicted instead of operating or maintaining a controlled substance laboratory involving methamphetamine. Offenders will receive a sentencing guidelines minimum sentence

range from 0-18 months to 117-160 months. Local units of government will incur the cost of incarceration in a local facility, which varies by county. The State will incur the cost of felony probation at an average annual cost of \$1,750, as well as the cost of incarceration in a State facility at an average annual cost of \$27,000. For each offender who is convicted, sent to prison, and given the longest allowable minimum sentence, it will cost the State approximately \$360,000.

Public libraries will benefit from any additional penal fine revenue raised due to the offense.

Fiscal Analyst: Jessica Runnels  
Bethany Wicksall

Public libraries will benefit from any additional penal fine revenue raised due to the changes.

### **Senate Bills 650 (S-1) and 651 (S-1)**

The bills will have an indeterminate fiscal impact on State and local government.

According to the Department of Corrections Statistical Report, in 2001 no offenders were convicted of possessing more than 10 grams of ephedrine. There are no data to indicate whether increasing the prohibited amount to more than 12 grams will reduce the number of convicted offenders, or whether adding possession of pseudoephedrine to this offense will increase the number of convicted offenders. Offenders will receive a sentencing guidelines minimum sentence range from 0-3 months to 7-16 months. Because the longest allowable minimum sentence is less than 18 months, offenders will likely receive probation or incarceration in a local facility. The State will incur the cost of felony probation, while local units of government will incur the cost of incarceration, which varies by county.

Public libraries will benefit from any additional penal fine revenue raised due to the changes.

### **Senate Bills 652 (S-3) and 777 (S-2)**

The bills will have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders will be convicted of transporting or possessing anhydrous ammonia in an unapproved container or tampering with an approved container. Offenders convicted of the new Class F crime will receive a sentencing guidelines minimum sentence range from 0-3 months to 17-30 months. Local units will incur the cost of incarceration in a local facility, and the State will incur the cost of felony probation as well as the cost of incarceration in a State facility.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.