

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1353

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2003 HOUSE JUDICIARY

HB 1353

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1353

House Judiciary Committee

Conference Committee

Hearing Date 1-22-03

Tape Number	Side A	Side B	Meter #
1	xx		20-end
1		xx	0-7
Committee Clerk Signature <i>Al Penrose</i>			

Minutes: 11 members present, 2 members absent (Rep. Bernstein, Rep. Maragos)

Chairman DeKrey: We will hear testimony for HB 1353.

Robert Bennett, Asst. AG: (see attached summary) Support.

Chairman DeKrey: We will now have Rep. Thoreson give his testimony, and then we will take questions for Mr. Bennett.

Rep. Blair Thoreson: Support. I am a resident of the Horace-Mann neighborhood near the elementary school in Fargo. Several weeks ago we had a shooting gallery which was located right near the school. (see attached e-mail message). My wife works with foster care children, and in Cass County we have seen an incredible rise in the number of homes that need to be found to place these children in.

Chairman DeKrey: Thank you. At this time we will take questions for Mr. Bennett.

Sen. Trenbeath: Will this outlaw the sale of ephedrine in vending machines, or maybe it wasn't inadvertent.

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10/3/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1353
Hearing Date 1-22-03

Mr. Bennett: I don't think anything in the bill is inadvertent. It may impact products where ephedrine is found in bulk, it may affect the sale of items that are sold in convenience stores where you can just buy bottles of ephedrine that are sitting on the shelf in quantities of 100, 200, or 300 counts.

Sen. Trenbeath: But do you agree that under this, it would be unlawful to stock these in vending machines, even though they are single dose packages, an 18 year old would have access to the vending machine or under 18 year old.

Mr. Bennett: That might be an issue, depending on the type of package. The package could not contain more than 3 grams; but if it is a vending machine, it may very well. If that is considered to be the retail, over-the-counter sale.

Chairman DeKrey: Is there any mechanism, if this law is passed, that those people who have a legitimate use for it and do buy it in bulk, would still be able to do that somehow.

Mr. Bennett: I guess the issue may involved in bulk, most of the cold medications I found are either 30 mg. or 60 mg. sold in 24 or 48 packs. You are usually allowed to take around 3 or 4 dosages a day. There may be some which are limited to 2 a day. Again, we are talking about a single, over-the-counter sale. This is certainly not going to prevent people from coming in and buying separate sale after separate sale.

Rep. Klein: It sounds like the source of the problem is the ephedrine based drugs, without that it would be a lot harder to manufacture meth. and I don't know the whole ramifications of all these things with cold medications and other things, but it occurs to me that there must be an alternative to ephedrine based drugs. Is there any discussion happening relating to getting ephedrine based drugs as a controlled substance, for example.

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10/3/03
Date

Page 3
House Judiciary Committee
Bill/Resolution Number HB 1353
Hearing Date 1-22-03

Mr. Bennett: Some states have looked at that, controlling these substances, providing more control. Maybe the State Board of Pharmacy could declare it to be an immediate pre-cursor of meth, but the problem is that ephedrine is widespread and very effective in drying up a bad cold, and the dosages are so small. Ephedrine does have legitimate use.

Rep. Galvin: I know a pharmacist who, voluntarily, moved the products into the section behind the till. She has control over the products, would this work?

Mr. Bennett: That is one way, the pharmacist could keep an eye on sales; but what about the large discount stores, such as Wal-Mart, Target, etc. They do notify law enforcement when they see people buying these products. What we have is a non-prescription drug approved for use by the public without a prescription, it is not a controlled substance.

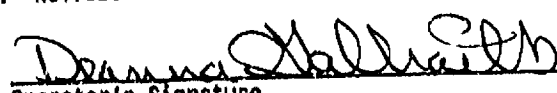
Rep. Onstad: If you purchase the products over the Internet, is that addressed or not?

Mr. Bennett: You can buy anything over the Internet, particularly when it is a non-prescription type of drug. As far as being addressed, it probably wouldn't be covered by the bill, unless flagged for buying large quantities, along with other drug paraphernalia.

Rep. Onstad: Is there a cost to the retail store.

Wayne Stenejem, AG: There is not a cost for the retail meth. watch, that's something that we have undertaken with our staff. We did work with some of the retailers, who helped us come up with the funding to buy the stickers, etc. We are also seeking a grant, because part of the training program that we're talking about in this bill, will consist of watching a video tape, that we are going to produce which shows which products people are buying, what they should do, and what they should not do when they see someone coming into the store and buying these products.

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10/3/03
Date

Page 4
House Judiciary Committee
Bill/Resolution Number HB 1353
Hearing Date 1-22-03

Sen. Dever: Self-service counters, are there software programs through the check-out registers, do they have the ability to red flag this kind of a purchase.

Mr. Bennett: The possession of the cold medicine alone, is not the only evidence that you are engaged in this activity. If someone has 12 boxes of cold medicine, along with all the other ingredients that might be involved, the containers, the batteries, that's going to be a strong indication that they are involved in the manufacture of this drug. We do look at the quantity in light of other things, such as drug paraphernalia. I don't see how this is going to impact the law-abiding person.

Sen. Trenbeath: I think you misunderstood my comment with regard to the vending machine. I am not concerned about people with a pocketful of quarters buying out all the ephedrine, I am worried about under this bill, it would be unlawful to stock it in a vending machine, because an 18 year old could access it.

Mr. Bennett: Yes, it could fall within the over-the-counter sale, where it might be. That would certainly be an issue that might have to be addressed, if it is under the age of 18. If it is the issue of the packages of the sales, that could be addressed, also.

Wayne Stenchjem, AG: This goes back to the point I was making this morning, when I introduced all of these bills. I said, I'm not promising anybody that there's not going to be some inconvenience, and that may be the situation with the vending machines, which are typically found in a hotel, they could just as easily move it behind the counter at the front desk and sell it there. There may be problems with people who want to buy more than 2 or 3. The problem in ND is severe enough that it needs a reaction, that yes, it's going to cost some inconvenience to people, and that is simply the way it has to be, in my mind.

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10/3/03
Date

Page 5
House Judiciary Committee
Bill/Resolution Number HB 1353
Hearing Date 1-22-03

Rep. Klemm: I understand that there is a large problem with these kinds of products is that they are susceptible to shoplifting and you don't need proof of age or anything to shoplift. How is this going to help that sort of thing, if we don't have some kind of restrictive access to that.

Mr. Stenehjem: Here is how that is going to happen in the marketplace. What's going to happen is that people who operate grocery stores, convenience stores for a profit, will if they feel the need is there and that the loss is great enough, decide to take alternative measures to protect their inventory. I know there are stores here in North Dakota that, in the evenings and on the weekends, remove the cold capsules from their shelves, or remove all of them but one or two because what you are talking about happens to them. They are finding that they are the victims of such huge amounts of shoplifting, they have to get control of their inventory. They'll take care of themselves I think.

Chairman DeKrey: Thank you. Any further testimony in support of HB 1353.

Tom Woodmansee, President of the ND Grocers Association: We appear in support of the Attorney General's efforts in this area. We've been working with him since midsummer and are people are willing to do their part as to what they have to do, and should this become a problem on theft, I'm sure most of you will make the proper adjustments and get them out of the way, but our people have learned a lot over the last six months, we just had a convention last weekend in Fargo. They feel that this is something they can deal with. I think you will have the complete support of the retail community. We're getting very good of checking ID's to determine who is old enough and who is not. I think we can do our part in this one too.

Chairman DeKrey: Thank you.

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Page 6
House Judiciary Committee
Bill/Resolution Number HB 1353
Hearing Date 1-22-03

Rep. Kretschmar: Would it be less onerous or more onerous for retailers, if the law provided that if someone bought more than 3 packages, they'd have to take down their name and address, SS #.

Mr. Woodmansee: I think it would be more, because I think a lot of them are doing it now, just writing it down and taking addresses at the advice of the law enforcement community, because they would prefer them not to be strictly identified with that individual, so that retaliation could not come back, if they started taking names. What they do now, is take whatever information they've got and supply it to the law enforcement people. In the Fargo area, some of the merchants are now already having it show up on their till, if they come through with more than 2 pkgs.

Chairman DeKrey: Thank you. Anyone else wish to testify in support of HB 1353.

Nancy Bukar, Director of State Governmental Relations for the CHPA: CHPA is the trade association that represents the manufacturers of the over-the-counter drugs in question and in this bill today. Our members include the large pharmaceutical companies as well as smaller ones, and generic companies that manufacturer drugs containing ephedrine, etc. that are used to manufacturer meth. We've been working on this issue for a long time, over 7 years. We participated this summer with the A.G. in North Dakota Meth. Seminars. We did actually make a donation to the Meth Watch program. We did want to assist the A.G. in his good efforts. Our member companies have also contributed up to 5 million dollars to the partnership for a drug free America to try and fight this problem on a national level and particularly in the Midwest, and they do that voluntarily. There have been some questions come about at pseudoephedrine as a whole, and I want to address those before I talk about the bill. Pseudoephendrine is the only

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