

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 542 - SB 962**

February 19, 2013

**SUMMARY OF BILL:** Requires a pharmacist to counsel with any person seeking to purchase a Schedule II controlled substance as to the reasons for the purchase and authorizes the pharmacist to decline the sale if the pharmacist believes the sale is not for a legitimate medical purpose. Creates a Class A misdemeanor offense for the owner or operator of any pharmacy who knowingly restricts or interferes with a pharmacist's duty to fulfill such requirement and authorization. Authorizes a pharmacy or pharmacist to collect any state or local sales tax due on prescription diabetic supplies sold; otherwise, requires the pharmacy benefits manager to collect and remit such sales tax as part of the monies received as a patient's responsibility for a co-payment or co-insurance.

**ESTIMATED FISCAL IMPACT:**

**Increase State Revenue – Net Impact – \$1,561,000**

**Increase Local Revenue – \$637,000**

Assumptions:

- Any increase in investigations and disciplinary actions against pharmacists and pharmacy owners or operators who violate the requirements of this bill will not result in a significant regulatory or fiscal impact and can be accommodated within existing budgetary resources of the Department of Health.
- There will not be a sufficient number of prosecutions for state or local governments to experience any significant increase in revenue or expenditures.
- Based on information provided by the Department of Revenue (DOR), the national diabetes test strips market and the national lancets market will generate approximately \$4.754 billion in sales during FY12-13 (\$3.962 billion from test strips and \$0.792 billion from lancets). These numbers are assumed to remain constant in subsequent years under current law.
- According to the U.S. Census, the estimated population in Tennessee in 2012 was 6,456,243; the estimated population for the United States was 313,914,040. Therefore, the population in Tennessee is approximately 2.06 percent of the national population ( $\$6,456,243 / 313,914,040$ ).

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- Tennessee accounts for 2.06 percent of the national test strips market and the national lancets market, the equivalent of \$97,932,400 in statewide sales (\$4.754 billion x 2.06%).
- According to DOR, test strips and lancets used by non-profit organizations are exempt from sales tax under current law. Thirty percent of sales in Tennessee from both markets are sales tax exempt. As a result, approximately \$29,379,720 ( $\$97,932,400 \times 30\%$ ) in sales will be sales tax exempt under current law.
- Taxable sales from both markets occurring in Tennessee are estimated to be \$68,552,680 per year ( $\$97,932,400 - \$29,379,720$ ).
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent.
- The recurring amount of state sales tax which is owed is estimated to be \$4,798,688 ( $\$68,552,680 \times 7.0\%$ ); the recurring amount of local option sales tax which is owed is estimated to be \$1,713,817 ( $\$68,552,680 \times 2.5\%$ ).
- Diabetic supplies are obtained by either prescription or over-the-counter.
- Twenty five percent of total sales are assumed to be over-the-counter purchases (these purchases are assumed to be made by individuals who purchase their supplies without prescriptions or by individuals who have a prescription, but no health care insurance plan). It is further assumed that individuals who have prescriptions, but no health care insurance plan, are directed by pharmacies to over-the-counter supplies. State and local sales taxes which are owed on over-the-counter supplies are assumed to be collected and remitted under current law. As a result, approximately \$1,199,672 ( $\$4,798,688 \times 25\%$ ) of state sales taxes which are owed is assumed to be collected under current law; and approximately \$428,454 ( $\$1,713,817 \times 25\%$ ) of local option sales taxes which are owed is assumed to be collected under current law.
- The remaining 75 percent of total sales are assumed to be for individuals that obtain their diabetic supplies via prescription that have a health care insurance plan. Individuals who have a health care insurance plan that obtain their diabetic supplies via prescription are assumed to not be paying state and local sales taxes as owed on such supplies because these individuals only pay their required co-pays as part of their health care insurance plan. When the individuals' insurance companies reimburse the applicable pharmacies for the cost of the diabetic supplies, the reimbursements are net of any sales taxes which are owed on the supplies. As a result, users unknowingly obtain the diabetic supplies without sales taxes being collected on such items, which indirectly cause pharmacies to often pay the sales taxes which are owed. However, many pharmacies may not be remitting the sales taxes as owed because they are under the impression that such items are already sales tax exempt under current law. Therefore, some pharmacies may be remitting sales taxes; while others may not be remitting.
- For diabetic supplies which are obtained via prescription by individuals with health care insurance plans, it is estimated that sales taxes are collected and remitted on 50 percent of such supplies. As a result, approximately \$1,799,508 ( $\$4,798,688 \times 75\% \times 50\%$ ) of state sales taxes which are owed is assumed to be collected under current law; and approximately \$642,681 ( $\$1,713,817 \times 75\% \times 50\%$ ) of local option sales taxes which are owed is assumed to be collected under current law.
- Total state sales tax collections under current law are estimated to be \$2,999,180 ( $\$1,199,672 + \$1,799,508$ ); total local option sales tax collections under current law are

estimated to be \$1,071,135 (\$428,454 + \$642,681). As a result, uncollected state sales taxes are estimated to be \$1,799,508 (\$4,798,688 owed - \$1,199,672 collected - \$1,799,508 collected); uncollected local option sales taxes are estimated to be \$642,682 (\$1,713,817 owed - \$428,454 collected - \$642,681 collected).

- Ten percent of currently uncollected sales tax will remain uncollected; the remaining 90 percent is assumed to be collected as a result of this bill. Therefore, the recurring increase in state sales tax revenue is estimated to be \$1,619,557 (\$1,799,508 x 90%); the recurring increase in local option sales tax revenue is estimated to be \$578,413 (\$642,682 x 90%).
- Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(A), local governments receive 4.603 percent of state sales tax revenue as state-shared sales tax revenue.
- Pursuant to Tenn. Code Ann. § 67-6-103(q), no portion of revenue derived from the 0.5 percent sales tax rate increase, from 5.5 percent to 6.0 percent (effective April 1, 1992), or the 1.0 percent sales tax rate increase, from 6.0 percent to 7.0 percent (effective July 15, 2002), shall be distributed to local government.
- The effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617% [(5.5%/7.0%) x 4.603%].
- The recurring increase in local revenue pursuant to the state-shared allocation is estimated to be \$58,579 (\$1,619,557 x 3.617%).
- The net recurring increase in state revenue is estimated to be \$1,560,978 (\$1,619,557 - \$58,579).
- The total recurring increase in local revenue is estimated to be \$636,992 (\$578,413 + \$58,579).

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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