

**CONFIDENTIAL**  
**LEGISLATIVE BILL REVIEW FORM: 2016**

Bill Number: S.190 Name of Bill: Health, prescription drugs; controlled substances, 18VSA4216

Agency/Dept: VSP/DDU Author of Bill Review: Sgt Thomas Mozzer

Date of Bill Review: 2/7/16 Related Bills and Key Players: Sen. Lyons

Status of Bill: (check one)

☒ Upon Introduction ☐ As passed by 1<sup>st</sup> body ☐ As passed by both bodies

Recommended Position:

☐ Support ☒ Oppose ☐ Remain Neutral ☐ Support with modifications identified in # 8 below

**Analysis of Bill**

**1. Summary of bill and issue it addresses.**

S.190 is introduced to modify existing statute 18VSA4216, Authorized possession by individuals to allow up to a (14) day supply of regulated prescription drugs to be carried outside of their authorized prescription containers. The current law allow for up to a (2) day supply of prescription drugs to be carried outside of an authorized container.

**2. Is there a need for this bill?**

Although the current law allows for a (2) day supply, many weekly prescription dispensing containers purchased aftermarket, allow for (7) days of medications. The intent behind the modification is valid; however, several health concerns accompany the modification in the law. Those concerns will be discussed in Section 5.

**3. What are likely to be the fiscal and programmatic implications of this bill for this Department?**

Drug Diversion investigators may see an increase in requests to assist within the department as well as outside agencies concerning patient profile requests for encounters with larger amounts of prescriptions outside or normal prescribed pill containers. Current law allows for (2) days of medications to be carried without the use of designated legal containers. This modification/bill will allow a substantial increase in those medications and/or drugs.

**4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?**

Law enforcement agencies would be the only departments to see any change in policy or enforcement. Those changes would likely be minor if at all. The current law and bill as introduced has no punitive accountability attached and therefore, is unenforceable by law enforcement agencies in the state of

Vermont. A modifications and enhancement of the bill may be something agencies are more likely to support.

**5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?**

The Drug Enforcement Administration and current federal law requires all medications and regulated drugs to be transported in their original and prescribed containers. The containers must include the original label for the prescribed medication and the label mustn't be altered. The DEA currently doesn't have the resources to enforce such small quantities or violations concerning medications and prescription drugs carried outside of an original container; however, the law does allow for such prosecution.

In speaking with Robert Enos, Executive Officer for the Board of Pharmacy, he expressed real concerns for the modification of the law. He suggested anytime pills are outside of their original packaging or container, there are several issues to consider:

- Loose tablets without labels can be extremely dangerous. Many people in the U.S. have multiple prescriptions and confusion can occur with the times and amounts of pills needed for patients.
- Prescribed containers are designed to protect the medications and drugs from the elements. Moisture, exposure to sunlight and even oxygen can degrade prescription medications. Prescribed pill containers are designed to keep exposure to those elements at a minimum. The containers are manufactured to keep the medications from seeping through the plastic and don't contain harmful chemicals which can transfer from plastics into prescription medications.
- Some medications and drugs lose potency with some of the above exposures. Nitro Glycerin tablets when exposed to oxygen lose potency, for example. (Health Day, News for Healthier Living)
- There could be an increase in diversion by some individuals who would now be authorized to carry dozens if not hundreds of pills in something other than a prescription bottle. (CDC reports 21.8% of U.S. citizens have 3 or more prescriptions issued to them)
- Exposure to children as unauthorized prescription containers aren't secure and can allow for unintended contact and ingestion. Enos doesn't speak for the Board of Pharmacy, but personally is "totally opposed" to the idea.

In speaking with Meika DiPietro, Program manager for VPMS with the Department of Health, she also voiced concerns for the Bill S.190 mainly concerning diversion. She explained concerns for allowing a large number of prescription drug pills to be allowed in any type of carrying container to include pockets and plastic baggies. We discussed the possibility that pills would rub together and transfer from one to the other and the exposure to elements that may render some medications less potent or effective.

Lisa McElhaney, President of NADDI (National Association of Drug Diversion Investigators) and Charlie Cichon, Executive Director for NADDI, both responded to my request on their position on modifications to the existing law.

McElhaney and Cichon made the following concerns and observations on allowing a 14 day supply of regulated medications/ drugs to be carried outside of an authorized container.

- The change in quantity may assist one part of the population (vacationers needed additional means of carrying pills), but opens up an entirely larger population with the means of diverting greater amounts of regulated drugs without the ability to enforce the law.

Please return this bill review as a Microsoft Word or PDF document to [Jahala.Dudley@vermont.gov](mailto:Jahala.Dudley@vermont.gov) and Jessica [Mishaan@vermont.gov](mailto:Mishaan@vermont.gov)

- Increasing the ability to cloak Rx diversion and sales by allowing larger quantities of medications to be carried virtually unchecked.
- Most Rx deal with 10-30 pills at a time, there may be an increase of problems with prosecution of illegal possession cases.
- LEO's will have difficulty in determining what a (14) day supply of regulated drugs is without a prescription bottle label and doctor contact information which are on authorized bottles. NADDI suggests mandating copies of prescriptions or labels accompany any unauthorized carry method.

I made contact with Deputy SA Steve Brown for Windham County. After speaking with the staff at the office, the office was in support of the modification to 18VS4216 if a penalty was associated with change in statute. Concerns were made with the inability to enforce the law as written or proposed.

## **6. Other Stakeholders:**

### **6.1 Who else is likely to support the proposal and why?**

With possible modifications to the proposed bill, States Attorney's offices who can prosecute violations in relation to diversion of prescription medications.

### **6.2 Who else is likely to oppose the proposal and why?**

Law enforcement agencies and pharmacists concerning the list of possible implications listed in #5.

## **7. Rationale for recommendation:**

The contents of this bill allows for a much greater threshold of prescription medications to be carried outside of authorized prescription bottles. The current law doesn't address the issue of accountability, nor does S.190 as introduced. The bill doesn't address the requirement of keeping copies of current prescriptions with the patient if those prescriptions are carried in a secondary unauthorized container. The increased allowance of carrying such medications can be a health risk for patients or unintended contact with non-patients.

## **8. Specific modifications that would be needed to recommend support of this bill:**

1. Maine currently doesn't allow medications outside of their original container referenced in 17-A M.R.S. section 1107-A (2), 22 M.R.S. section 2383-B (1) with the exception of while in "use". The pertinent statute says a drug may be considered "in use" when it has been placed in "reasonable repackaging for more convenient legitimate medical use." This exception covers drugs and medications in which they are being used or will be used in appropriate daily or weekly pill dispensers. An addition of similar language would allow for reasonable exceptions for citizens who may need such accommodations, while ensuring drugs and medications will remain protected from the elements that can degrade those medications.
2. 18VSA4216, Authorized personnel by individuals encompasses the quantity of regulated drugs and medications authorized to be kept outside an original container, but does not consider a penalty associated with an amount exceeding what the statute allows for. This can be troubling for law enforcement agencies when attempting to enforce either the current statute or the amended one. The lack of a penalty associated with the violation of the statute makes the law unenforceable. A misdemeanor penalty with a fine or minimal potential incarceration would allow the law to be enforced and adhered to.
3. Mandating copies of regulated drugs or prescriptions be present with any medication outside an unauthorized prescribed container to diminish the likelihood of mishandling or diversion.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one?

If so, which one and how many?

No, the amendment to the current law would have change in these areas.

Secretary/Commissioner has reviewed this document



Date: 4/21/16

The apparent intent of this proposed change was to allow people who take multiple prescribed medications and chose to utilize a weekly organizer to do so without committing a criminal act. This makes sense. This happens now and is promoted as a way to aid people in keeping their prescriptions straight. In balancing the risks to the benefits I believe the benefits outweigh the risks.

Keith Flynn

4/21/16