

SHB 2266 - H AMD

By Representative Campbell

1 Strike all material after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Restricting access to certain precursor
4 drugs used to manufacture methamphetamine to ensure that they are
5 only sold at retail to individuals who will use them for legitimate
6 purposes upon production of proper identification is an essential
7 step to controlling the manufacture of methamphetamine.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.43
9 RCW to read as follows:

10 Any product containing ephedrine, pseudoephedrine, or
11 phenylpropanolamine, or their salts, isomers, or salts of isomers
12 as its only active ingredient, dispensed, sold, or distributed at
13 retail shall be dispensed, sold, or distributed only by a licensed
14 pharmacist or a practitioner as defined in RCW 18.64.011. A
15 pharmacist or practitioner purchasing, receiving, or otherwise
16 acquiring any product containing ephedrine, pseudoephedrine, or
17 phenylpropanolamine, or their salts, isomers, or salts of isomers
18 as its only active ingredient, must provide adequate identification
19 verifying that the pharmacist is licensed by the state. A
20 pharmacist or practitioner that dispenses, sells, or distributes
21 any product containing ephedrine, pseudoephedrine, or
22 phenylpropanolamine, or their salts, isomers, or salts of isomers
23 as its only active ingredient, must comply with all of the
24 requirements of section 3 of this act.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.43
26 RCW to read as follows:

27 (1) For purposes of this section, "traditional Chinese herbal
28 practitioner" means a person who is certified as a diplomate in
29 Chinese herbology from the national certification commission for

1 acupuncture and oriental medicine or who has received a certificate
2 in Chinese herbology from a school accredited by the accreditation
3 council on acupuncture and oriental medicine.

4 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
5 registered with, the department of health under chapter 18.64 RCW,
6 or an employee thereof, a practitioner as defined in RCW 18.64.011,
7 or a traditional Chinese herbal practitioner may not knowingly
8 sell, transfer, or otherwise furnish to any person a product at
9 retail that he or she knows to contain any detectable quantity of
10 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
11 isomers, or salts of isomers, without first obtaining photo
12 identification of the person that shows the date of birth of the
13 person, and having the person sign a written log or receipt showing
14 the date of the transaction, the name of the person, and the amount
15 of the product being sold, transferred, or otherwise furnished.
16 The written log must be maintained for a period of two years.

17 (3) A person buying or receiving a product at retail containing
18 any detectable quantity of ephedrine, pseudoephedrine, or
19 phenylpropanolamine, or their salts, isomers, or salts of isomers,
20 from a pharmacy licensed by, or shopkeeper or itinerant vendor
21 registered with, the department of health under chapter 18.64 RCW,
22 or an employee thereof, a practitioner as defined in RCW 18.64.011,
23 or a traditional Chinese herbal practitioner must first produce
24 photo identification of the person that shows the date of birth of
25 the person, and sign a written log or receipt showing the date of
26 the transaction, the name of the person, and the amount of the
27 product being sold, transferred, or otherwise furnished.

28 (4) Any product containing any detectable quantity of
29 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
30 isomers, or salts of isomers, shall be kept in a location that is
31 not accessible by customers without assistance of an employee of
32 the merchant. If the product contains ephedrine, pseudoephedrine,
33 or phenylpropanolamine, or their salts, isomers, or salts of
34 isomers as its only active ingredient, the product must be kept in
35 a location within the pharmacy area that is not accessible by
36 customers.

37 (5) No pharmacy licensed by, or shopkeeper or itinerant vendor
38 registered with, the department of health under chapter 18.64 RCW,
39 or an employee thereof, a practitioner as defined in RCW 18.64.011,

1 or a traditional Chinese herbal practitioner may sell any product
2 containing any detectable quantity of ephedrine, pseudoephedrine,
3 or phenylpropanolamine, or their salts, isomers, or salts of
4 isomers to a person that is not at least eighteen years old.

5 (6) A pharmacy licensed by, or shopkeeper or itinerant vendor
6 registered with, the department of health under chapter 18.64 RCW,
7 or an employee thereof, a practitioner as defined in RCW 18.64.011,
8 or a traditional Chinese herbal practitioner shall provide access
9 to the written log to the board of pharmacy or department of health
10 if necessary for regulatory activities.

11 (7) The board of pharmacy, by rule, may exempt products
12 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or
13 their salts, isomers, or salts of isomers, in combination with
14 another active ingredient from the requirements of this section if
15 they are found not to be used in the illegal manufacture of
16 methamphetamine or other controlled dangerous substances. A
17 manufacturer of a drug product may apply for removal of the product
18 from the requirements of this section if the product is determined
19 by the board to have been formulated in such a way as to
20 effectively prevent the conversion of the active ingredient into
21 methamphetamine. The burden of proof for exemption is upon the
22 person requesting the exemption. The petitioner shall provide the
23 board with evidence that the product has been formulated in such a
24 way as to serve as an effective general deterrent to the conversion
25 of pseudoephedrine into methamphetamine. The evidence must include
26 the furnishing of a valid scientific study, conducted by an
27 independent, professional laboratory and evincing professional
28 quality chemical analysis. Factors to be considered in whether a
29 product should be excluded from this section include but are not
30 limited to:

31 (a) Ease with which the product can be converted to
32 methamphetamine;

33 (b) Ease with which pseudoephedrine is extracted from the
34 substance and whether it forms an emulsion, salt, or other form;

35 (c) Whether the product contains a "molecular lock" that
36 renders it incapable of being converted into methamphetamine;

37 (d) Presence of other ingredients that render the product less
38 likely to be used in the manufacture of methamphetamine; and

1 (e) Any pertinent data that can be used to determine the risk
2 of the substance being used in the illegal manufacture of
3 methamphetamine or any other controlled substance.

4 (8) Nothing in this section applies:

5 (a) To any product containing ephedrine, pseudoephedrine, or
6 phenylpropanolamine, or their salts, isomers, or salts of isomers
7 that is not the only active ingredient and that is in liquid,
8 liquid capsule, or gel capsule form;

9 (b) To the sale of a product that may only be sold upon the
10 presentation of a prescription;

11 (c) To the sale of a product by a traditional Chinese herbal
12 practitioner to a patient; or

13 (d) When the details of the transaction are recorded in a
14 pharmacy profile individually identified with the recipient and
15 maintained by a licensed pharmacy.

16 (9)(a) No pharmacy licensed by, or shopkeeper or itinerant
17 vendor registered with, the department of health under chapter
18 18.64 RCW, a practitioner as defined in RCW 18.64.011, or a
19 traditional Chinese herbal practitioner may retaliate against any
20 employee that has made a good faith attempt to comply with the
21 requirements of this section by requesting that a customer present
22 photo identification, making a reasonable effort to determine the
23 customer's age, and documenting the transaction in the written log.

24 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
25 registered with, the department of health under chapter 18.64 RCW,
26 a practitioner as defined in RCW 18.64.011, or a traditional
27 Chinese herbal practitioner is subject to prosecution under
28 subsection (10) of this section if they made a good faith attempt
29 to comply with the requirements of this section by requesting that
30 a customer present photo identification, making a reasonable effort
31 to determine the customer's age, and documenting the transaction in
32 the written log.

33 (10) A violation of this section is a gross misdemeanor.

34 **Sec. 4.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to
35 read as follows:

36 (1) A shopkeeper registered as provided in this section may
37 sell nonprescription drugs, if such drugs are sold in the original
38 package of the manufacturer.

1 (2) Every shopkeeper not a licensed pharmacist, desiring to
2 secure the benefits and privileges of this section, is hereby
3 required to register as a shopkeeper through the master license
4 system, and he or she shall pay the fee determined by the secretary
5 for registration, and on a date to be determined by the secretary
6 thereafter the fee determined by the secretary for renewal of the
7 registration; and shall at all times keep said registration or the
8 current renewal thereof conspicuously exposed in the location to
9 which it applies. In event such shopkeeper's registration is not
10 renewed by the master license expiration date, no renewal or new
11 registration shall be issued except upon payment of the
12 registration renewal fee and the master license delinquency fee
13 under chapter 19.02 RCW. This registration fee shall not authorize
14 the sale of legend drugs or controlled substances.

15 (3) The registration fees determined by the secretary under
16 subsection (2) of this section shall not exceed the cost of
17 registering the shopkeeper.

18 (4) Any shopkeeper who shall vend or sell, or offer to sell to
19 the public any such nonprescription drug or preparation without
20 having registered to do so as provided in this section, shall be
21 guilty of a misdemeanor and each sale or offer to sell shall
22 constitute a separate offense.

23 (5) A shopkeeper who is not a licensed pharmacy may purchase
24 products containing ephedrine, pseudoephedrine, or
25 phenylpropanolamine, or their salts, isomers, or salts of isomers,
26 in combination with another active ingredient, only from a
27 wholesaler licensed by the department under RCW 18.64.046 or from
28 a manufacturer licensed by the department under RCW 18.64.045. The
29 board shall issue a warning to a shopkeeper who violates this
30 subsection, and may suspend or revoke the registration of the
31 shopkeeper for a subsequent violation.

32 (6) A shopkeeper who has purchased products containing any
33 detectable quantity of ephedrine, pseudoephedrine, or
34 phenylpropanolamine, or their salts, isomers, or salts of isomers,
35 in a suspicious transaction as defined in RCW 69.43.035, is subject
36 to the following requirements:

37 (a) The shopkeeper may not sell any quantity of ephedrine,
38 pseudoephedrine, or phenylpropanolamine, or their salts, isomers,
39 or salts of isomers, if the total monthly sales of these products

1 exceed ten percent of the shopkeeper's total prior monthly sales of
2 nonprescription drugs in March through October. In November
3 through February, the shopkeeper may not sell any quantity of
4 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
5 isomers, or salts of isomers, if the total monthly sales of these
6 products exceed twenty percent of the shopkeeper's total prior
7 monthly sales of nonprescription drugs. For purposes of this
8 section, "monthly sales" means total dollars paid by buyers. The
9 board may suspend or revoke the registration of a shopkeeper who
10 violates this subsection.

11 (b) The shopkeeper shall maintain inventory records of the
12 receipt and disposition of nonprescription drugs, utilizing
13 existing inventory controls if an auditor or investigator can
14 determine compliance with (a) of this subsection, and otherwise in
15 the form and manner required by the board. The records must be
16 available for inspection by the board or any law enforcement agency
17 and must be maintained for two years. The board may suspend or
18 revoke the registration of a shopkeeper who violates this
19 subsection. For purposes of this subsection, "disposition" means
20 the return of product to the wholesaler or distributor.

21 **Sec. 5.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to
22 read as follows:

23 (1) The owner of each place of business which sells legend
24 drugs and nonprescription drugs, or nonprescription drugs at
25 wholesale shall pay a license fee to be determined by the
26 secretary, and thereafter, on or before a date to be determined by
27 the secretary as provided in RCW 43.70.250 and 43.70.280, a like
28 fee to be determined by the secretary, for which the owner shall
29 receive a license of location from the department, which shall
30 entitle such owner to either sell legend drugs and nonprescription
31 drugs or nonprescription drugs at wholesale at the location
32 specified for the period ending on a date to be determined by the
33 secretary, and each such owner shall at the time of payment of such
34 fee file with the department, on a blank therefor provided, a
35 declaration of ownership and location, which declaration of
36 ownership and location so filed as aforesaid shall be deemed
37 presumptive evidence of the ownership of such place of business
38 mentioned therein. It shall be the duty of the owner to notify

1 immediately the department of any change of location and ownership
2 and to keep the license of location or the renewal thereof properly
3 exhibited in such place of business.

4 (2) Failure to conform with this section is a misdemeanor, and
5 each day that the failure continues is a separate offense.

6 (3) In event the license fee remains unpaid on the date due, no
7 renewal or new license shall be issued except upon compliance with
8 administrative procedures, administrative requirements, and fees
9 determined as provided in RCW 43.70.250 and 43.70.280.

10 (4) No wholesaler may sell any quantity of drug products
11 containing ephedrine, pseudoephedrine, phenylpropanolamine, or
12 their salts, isomers, or salts of isomers, if the total monthly
13 sales of these products to persons within the state of Washington
14 exceed five percent of the wholesaler's total prior monthly sales
15 of nonprescription drugs to persons within the state in March
16 through October. In November through February, no wholesaler may
17 sell any quantity of drug products containing ephedrine,
18 pseudoephedrine, or phenylpropanolamine, or their salts, isomers,
19 or salts of isomers if the total monthly sales of these products to
20 persons within the state of Washington exceed ten percent of the
21 wholesaler's total prior monthly sales of nonprescription drugs to
22 persons within the state. For purposes of this section, monthly
23 sales means total dollars paid by buyers. The board may suspend or
24 revoke the license of any wholesaler that violates this section.

25 (5) The board may exempt a wholesaler from the limitations of
26 subsection (4) of this section if it finds that the wholesaler
27 distributes nonprescription drugs only through transactions between
28 divisions, subsidiaries, or related companies when the wholesaler
29 and the retailer are related by common ownership, and that neither
30 the wholesaler nor the retailer has a history of suspicious
31 transactions in precursor drugs as defined in RCW 69.43.035.

32 (6) The requirements for a license apply to all persons, in
33 Washington and outside of Washington, who sell both legend drugs
34 and nonprescription drugs and to those who sell only
35 nonprescription drugs, at wholesale to pharmacies, practitioners,
36 and shopkeepers in Washington.

37 (7)(a) No wholesaler may sell any product containing ephedrine,
38 pseudoephedrine, or phenylpropanolamine, or their salts, isomers,
39 or salts of isomers, as its only active ingredient, to any person

1 in Washington other than a pharmacy licensed under this chapter or
2 a practitioner as defined in RCW 18.64.011.

3 (b) No wholesaler may sell any (~~quantity~~) product containing
4 any detectable quantity of ephedrine, pseudoephedrine,
5 phenylpropanolamine, or their salts, isomers, or salts of isomers
6 in combination with another active ingredient, to any person in
7 Washington other than a pharmacy licensed under this chapter, a
8 shopkeeper or itinerant vendor registered under this chapter,
9 (~~or~~) a practitioner as defined in RCW 18.64.011, or a traditional
10 Chinese herbal practitioner as defined in section 3 of this act.

11 (c) A violation of this subsection is punishable as a class C
12 felony according to chapter 9A.20 RCW, and each sale in violation
13 of this subsection constitutes a separate offense.

14 **Sec. 6.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to
15 read as follows:

16 (1) Any itinerant vendor or any peddler of any nonprescription
17 drug or preparation for the treatment of disease or injury, shall
18 pay a registration fee determined by the secretary on a date to be
19 determined by the secretary as provided in RCW 43.70.250 and
20 43.70.280. The department may issue a registration to such vendor
21 on an approved application made to the department.

22 (2) Any itinerant vendor or peddler who shall vend or sell, or
23 offer to sell to the public any such nonprescription drug or
24 preparation without having registered to do so as provided in this
25 section, is guilty of a misdemeanor and each sale or offer to sell
26 shall constitute a separate offense.

27 (3) In event the registration fee remains unpaid on the date
28 due, no renewal or new registration shall be issued except upon
29 compliance with administrative procedures, administrative
30 requirements, and fees determined as provided in RCW 43.70.250 and
31 43.70.280. This registration shall not authorize the sale of
32 legend drugs or controlled substances.

33 (4) An itinerant vendor may purchase products containing
34 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
35 isomers, or salts of isomers in combination with another active
36 ingredient, only from a wholesaler licensed by the department under
37 RCW 18.64.046 or from a manufacturer licensed by the department
38 under RCW 18.64.045. The board shall issue a warning to an

1 itinerant vendor who violates this subsection, and may suspend or
2 revoke the registration of the vendor for a subsequent violation.

3 (5) An itinerant vendor who has purchased products containing
4 any detectable quantity of ephedrine, pseudoephedrine, or
5 phenylpropanolamine, or their salts, isomers, or salts of isomers,
6 in a suspicious transaction as defined in RCW 69.43.035, is subject
7 to the following requirements:

8 (a) The itinerant vendor may not sell any quantity of
9 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
10 isomers, or salts of isomers, if the total monthly sales of these
11 products exceed ten percent of the vendor's total prior monthly
12 sales of nonprescription drugs in March through October. In
13 November through February, the vendor may not sell any quantity of
14 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
15 isomers, or salts of isomers, if the total monthly sales of these
16 products exceed twenty percent of the vendor's total prior monthly
17 sales of nonprescription drugs. For purposes of this section,
18 "monthly sales" means total dollars paid by buyers. The board may
19 suspend or revoke the registration of an itinerant vendor who
20 violates this subsection.

21 (b) The itinerant vendor shall maintain inventory records of
22 the receipt and disposition of nonprescription drugs, utilizing
23 existing inventory controls if an auditor or investigator can
24 determine compliance with (a) of this subsection, and otherwise in
25 the form and manner required by the board. The records must be
26 available for inspection by the board or any law enforcement agency
27 and must be maintained for two years. The board may suspend or
28 revoke the registration of an itinerant vendor who violates this
29 subsection. For purposes of this subsection, "disposition" means
30 the return of product to the wholesaler or distributor."

31 Correct the title.

EFFECT: Removes the Schedule V controlled substance
designation for products that contain ephedrine,
pseudoephedrine, or phenylpropanolamine as the only active
ingredient and requires that these products only be sold at
retail by pharmacies or authorized health care providers.
Places photo identification, written log, age, and access

requirements on the sale of products that contain ephedrine, pseudoephedrine, or phenylpropanolamine as the only active ingredient in the same manner as combination products. Removes exemptions for liquid and gel capsule forms of products that contain ephedrine, pseudoephedrine, or phenylpropanolamine as the only active ingredient.