H-1996.1

# SUBSTITUTE HOUSE BILL 1163

**State of Washington 52nd Legislature 1991 Regular Session**

**By** House Committee on Health Care (originally sponsored by Representatives Cole, Prentice, Braddock, Jacobsen, Winsley, Brekke, R. King, Leonard, Valle and Sprenkle).

Read first time March 6, 1991.

AN ACT Relating to controlled substances; amending RCW 69.50.302, 69.50.303, and 42.17.310; reenacting and amending RCW 69.50.101; adding new sections to chapter 69.50 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (a) Beginning July 1, 1992, the dispenser of a Schedule II controlled substance, except for inpatients in hospitals and nursing homes, shall transmit to a central repository designated by the board the following information for each prescription order administered or dispensed:

(1) Recipient's name;

(2) Recipient's identification number;

(3) National drug code number of the substance dispensed;

(4) Date of the prescription administered or dispensed;

(5) Quantity of the substance dispensed;

(6) Prescriber's name and United States drug enforcement agency registration number; and

(7) Dispenser's name and registration number.

(b) The information required by this section shall be transmitted:

(1) On an electronic device which is compatible with the receiving device of the central repository or by computer diskette, magnetic tape, or pharmacy universal claim form, which meets the specifications provided by rules of the board; and

(2) Within fifteen days of the time the substance is dispensed.

(c) Willful failure to transmit information as required by this section is a misdemeanor.

NEW SECTION. **Sec. 2.** (a) The information collected at the central repository pursuant to section 1 of this act is confidential and shall not be open to the public. Access to the information shall be limited to:

(1) Employees of the department of health, designated by the board as enforcement officers pursuant to RCW 69.50.500(b);

(2) Drug enforcement administration division group supervisors; and

(3) The executive director of the state boards of podiatric medicine, dental disciplinary, medical disciplinary, osteopathic medicine and surgery, and governors of veterinary; provided, however, that the executive director or chief investigator of each of these boards shall be limited in access to information relevant to licensees of his or her employing board.

(b) This section shall not prevent disclosure, at the discretion of the director of the board, to investigative agents of federal, state, county, or municipal law enforcement agencies, prosecuting attorneys, and the attorney general in the furtherance of criminal investigations or prosecutions within their respective jurisdictions.

(c) Unauthorized disclosure of information collected at the central repository provided by section 1 of this act is a misdemeanor. Violation of the provisions of this section is deemed willful neglect of duty and is grounds for removal from office.

NEW SECTION. **Sec. 3.** The board, in consultation with professional regulatory disciplinary authorities and professional associations, shall develop criteria for the production of exception reports from the information collected at the central repository. The board shall consult the state boards of podiatric medicine, dental examiners, medical examiners, and governors of veterinary in developing these criteria.

NEW SECTION. **Sec. 4.** (a) The central repository provided by section 1 of this act shall:

(1) Be capable of providing the collected information in forms required by the board, including but not limited to, dispensed by prescriber name or registration number, dispenser name or registration number, recipient name or identification number, type of substance, frequency, quantity, and dispensing location;

(2) Provide the board with continual, twenty-four-hour per day, on-line access to the collected information;

(3) Secure the collected information against access by unauthorized persons;

(4) Provide the board, in a reasonable time, with all collected information in a format readily usable by the board, in the event the relationship between the state and central repository is terminated; and

(5) Not withhold access to the collected information for any reason other than failure of the board to timely pay agreed fees and charges for use of the central repository.

(b) The board is authorized to enter into a contract with a vendor to serve as the central repository provided for in section 1 of this act or to purchase the necessary equipment to create the central repository within the board.

**Sec. 5.** RCW 69.50.101 and 1990 c 248 s 1, 1990 c 219 s 3, and 1990 c 196 s 8 are each reenacted and amended to read as follows:

As used in this chapter:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) a practitioner, or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy.

(d) "Drug enforcement administration" means the federal drug enforcement administration in the United States Department of Justice, or its successor agency.

((~~(d)~~)) (e) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II.

((~~(e)~~)) (f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint,

number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

((~~(f)~~)) (g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

((~~(g)~~)) (h) "Department" means the department of health.

((~~(h)~~)) (i) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

((~~(i)~~)) (j) "Dispenser" means a practitioner who dispenses.

((~~(j)~~)) (k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

((~~(k)~~)) (l) "Distributor" means a person who distributes.

((~~(l)~~)) (m) "Receipt" means to receive a controlled substance either with or without consideration.

((~~(m)~~)) (n) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

((~~(n)~~)) (o) "Exception report" means an output of data indicating Schedule II controlled substance quantity dispensed which is outside expected norms for a prescriber practicing a particular specialty or

field of health care, for a dispenser doing business in a particular location, or for a recipient.

(p) "Immediate precursor" means a substance which the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

((~~(o)~~)) (q) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing of a controlled substance in the course of his or her professional practice, or

(2) by a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

((~~(p)~~)) (r) "Marijuana" or "marihuana" means all parts of the plant of the genus Cannabis L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds

of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

((~~(q)~~)) (s) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

((~~(r)~~)) (t) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

((~~(s)~~)) (u) "Opium poppy" means the plant of the genus Papaver L., except its seeds, capable of producing an opiate.

((~~(t)~~)) (v) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

((~~(u)~~)) (w) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

((~~(v)~~)) (x) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a chiropodist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathy and surgery, a dentist licensed to practice dentistry, a ((~~podiatrist~~)) podiatric physician licensed to practice podiatry, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

((~~(w)~~)) (y) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

((~~(x)~~)) (z) "Recipient's identification number" means the unique number contained on a Schedule II controlled substance recipient's

valid driver's license, valid military identification card, or valid identicard issued pursuant to RCW 46.20.117 or a similar statute of another state if the recipient is not a resident of the state of Washington, or, if the recipient is less than eighteen years old and has no such identification, the unique number contained on the recipient's, parent's or guardian's valid driver's license, valid military identification card, or valid identicard issued pursuant to RCW 46.20.117 or a similar statute of another state if the parent or guardian is not a resident of the state of Washington, or, if the controlled dangerous substance is obtained for an animal, the unique number contained on the animal owner's valid driver's license, valid military identification card, or valid identicard issued pursuant to RCW 46.20.117 or a similar statute of another state if the owner is not a resident of the state of Washington which shall be recorded on the prescription by the prescriber.

(aa) "Registration number" means the number issued pursuant to the registration requirements of RCW 69.50.302 and 69.50.303.

(bb) "Secretary" means the secretary of health or the secretary's designee.

((~~(y)~~)) (cc) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

((~~(z)~~)) (dd) "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

**Sec. 6.** RCW 69.50.302 and 1989 1st ex.s. c 9 s 432 are each amended to read as follows:

(a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration <u>including a registration number</u> issued by the department in accordance with the board's rules.

(b) Persons registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety. ((~~Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered~~

~~under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.~~))

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with the board's rule.

**Sec. 7.** RCW 69.50.303 and 1989 1st ex.s. c 9 s 433 are each amended to read as follows:

(a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered((~~, or exempted under RCW 69.50.302(d),~~)) to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter upon application and payment of the required fee.

**Sec. 8.** RCW 42.17.310 and 1990 2nd ex.s. c 1 s 1103 are each amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold,

but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW.

(p) Financial disclosures filed by private vocational schools under chapter 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses during application for loans or program services provided by chapter 43.163 RCW and chapters 43.31, 43.63A, and 43.168 RCW.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers.

(w) Information obtained by the board of pharmacy as provided in RCW 69.45.090 and section 1 of this act.

(x) Information obtained by the board of pharmacy and its representatives as provided in RCW 69.41.044 and 69.41.280.

(y) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(z) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(aa) Financial and valuable trade information under RCW 51.36.120.

(bb) Effective March 1, 1991, the work and home addresses, other than the city of residence, of a person shall remain undisclosed or be omitted from all documents made available for public review if that person requests in writing, under oath, that these addresses be kept private because disclosure would endanger his or her life, physical safety, or property. This provision does not in any way restrict the sharing or collection of information by state and local governmental agencies required for the daily administration of their duties. The secretary of state shall administer this provision and establish the procedures and rules that are necessary for its operation. An agency that has not been furnished with a request for confidentiality of address information is not liable for damages resulting from its disclosure of the information. For purpose of service of process, the secretary of state shall serve as agent for each person who submits a request under this subsection. A request shall be of no force or effect if the requester does not include a statement, along with or part of the request, designating the secretary of state as agent of the requester for purposes of service of process.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public

inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

NEW SECTION. **Sec. 9.** This act shall not include stimulants within Schedule II controlled substances dispensed in compliance with RCW 69.50.402(a)(3)(ii). The board shall study the extent of abuse, overprescribing, and illegal diversion of these stimulants in this state, including other crimes associated with this abuse, determine any future trendlines, and report to the legislature by December 1, 1991, on its findings and conclusions.

NEW SECTION. **Sec. 10.** The board shall examine other alternatives to the requirements of this act for the control of Schedule II controlled substances overprescribing along with the total fiscal impact of any alternative proposals, compared to the administrative costs of this act, and report to the legislature by

December 1, 1991, with recommendations on any improvements or more efficacious method for addressing overprescribing of controlled substances.

NEW SECTION. **Sec. 11.** The board of pharmacy is authorized to adopt rules to implement the requirements of this act.

NEW SECTION. **Sec. 12.** Sections 1 through 4 of this act are each added to chapter 69.50 RCW.