
SENATE BILL 5405

State of Washington

57th Legislature

2001 Regular Session

By Senators Kline, Franklin, Regala, West, Oke, Sheahan, Parlette, Honeyford and Rasmussen; by request of Governor Locke

Read first time 01/22/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to precursor drugs; amending RCW 69.43.010,
2 69.43.020, 69.43.040, and 69.43.090; adding new sections to chapter
3 69.43 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** Communities all over the state of Washington
6 have experienced an increase in the illegal manufacture of
7 methamphetamine. Illegal methamphetamine labs create a significant
8 threat to the health and safety of the people of the state. Some of
9 the chemicals and compounds used to make methamphetamine, and the toxic
10 wastes the process generates, are hazards to the public health.
11 Increases in crime, violence, and the abuse and neglect of children
12 present at laboratory sites are also associated with the increasing
13 number of illegal laboratory sites. The drugs ephedrine,
14 pseudoephedrine, and phenylpropanolamine, which are used in the illegal
15 manufacture of methamphetamine, have been identified as factors in the
16 increase in the number of illegal methamphetamine labs. Therefore, it
17 is the intent of the legislature to place restrictions on the sale and
18 possession of those three drugs in order to reduce the proliferation of

1 illegal methamphetamine laboratories and the associated threats to
2 public health and safety.

3 **Sec. 2.** RCW 69.43.010 and 1998 c 245 s 107 are each amended to
4 read as follows:

5 (1) (~~Beginning July 1, 1988,~~) A report to the state board of
6 pharmacy shall be submitted in accordance with this chapter by a
7 manufacturer, wholesaler, retailer, or other person who sells,
8 transfers, or otherwise furnishes to any person (~~in this state~~) any
9 of the following substances or their salts or isomers:

- 10 (a) Anthranilic acid;
- 11 (b) Barbituric acid;
- 12 (c) Chlorephedrine;
- 13 (d) Diethyl malonate;
- 14 (e) D-lysergic acid;
- 15 (f) Ephedrine;
- 16 (g) Ergotamine tartrate;
- 17 (h) Ethylamine;
- 18 (i) Ethyl malonate;
- 19 (j) Ethylephedrine;
- 20 (k) Lead acetate;
- 21 (l) Malonic acid;
- 22 (m) Methylamine;
- 23 (n) (~~Methylformanide~~) Methylformamide;
- 24 (o) Methylephedrine;
- 25 (p) Methylpseudoephedrine;
- 26 (q) N-acetylanthranilic acid;
- 27 (r) Norpseudoephedrine;
- 28 (s) Phenylacetic acid;
- 29 (t) Phenylpropanolamine;
- 30 (u) Piperidine;
- 31 (v) Pseudoephedrine; and
- 32 (w) Pyrrolidine.

33 (2) The state board of pharmacy shall administer this chapter and
34 may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to
35 or remove a substance from the list in subsection (1) of this section.
36 In determining whether to add or remove a substance, the board shall
37 consider the following:

1 (a) The likelihood that the substance is useable as a precursor in
2 the illegal production of a controlled substance as defined in chapter
3 69.50 RCW;

4 (b) The availability of the substance;

5 (c) The relative appropriateness of including the substance in this
6 chapter or in chapter 69.50 RCW; and

7 (d) The extent and nature of legitimate uses for the substance.

8 (3)(a) (~~Beginning on July 1, 1988,~~) Any manufacturer, wholesaler,
9 retailer, or other person shall, before selling, transferring, or
10 otherwise furnishing any substance specified in subsection (1) of this
11 section to ((a)) any person (~~in this state~~), require proper
12 identification from the purchaser.

13 (b) For the purposes of this subsection, "proper identification"
14 means(~~, in the case of a face-to-face purchase,~~):

15 (i) A motor vehicle operator's license or other official state-
16 issued identification of the purchaser containing a photograph of the
17 purchaser, and includes the residential or mailing address of the
18 purchaser, other than a post office box number((~~τ~~))i

19 (ii) The motor vehicle license number of any motor vehicle owned or
20 operated by the purchaser((~~τ~~))i

21 (iii) A letter of authorization from any business for which any
22 substance specified in subsection (1) of this section is being
23 furnished, which includes the business license number and address of
24 the business((~~τ~~))i

25 (iv) A description of how the substance is to be used((~~τ~~))i and

26 (v) The signature of the purchaser.

27 The person selling, transferring, or otherwise furnishing any
28 substance specified in subsection (1) of this section shall affix his
29 or her signature as a witness to the signature and identification of
30 the purchaser. (~~The state board of pharmacy shall provide by rule for
31 the proper identification of purchasers in other than face-to-face
32 purchases.~~)

33 (c) A violation of or a failure to comply with this subsection is
34 a misdemeanor.

35 (4) (~~Beginning on July 1, 1988,~~) Any manufacturer, wholesaler,
36 retailer, or other person who sells, transfers, or otherwise furnishes
37 the substance specified in subsection (1) of this section to ((a)) any
38 person (~~in this state~~) shall, not less than twenty-one days before
39 delivery of the substance, submit a report of the transaction, which

1 includes the identification information specified in subsection (3) of
2 this section to the state board of pharmacy. However, the state board
3 of pharmacy may authorize the submission of the reports on a monthly
4 basis with respect to repeated, regular transactions between the
5 furnisher and the recipient involving the same substance if the state
6 board of pharmacy determines that either of the following exist:

7 (a) A pattern of regular supply of the substance exists between the
8 manufacturer, wholesaler, retailer, or other person who sells,
9 transfers, or otherwise furnishes such substance and the recipient of
10 the substance; or

11 (b) The recipient has established a record of using the substance
12 for lawful purposes.

13 (5) Any person specified in subsection (4) of this section who does
14 not submit a report as required by ~~((that))~~ subsection (4) of this
15 section is guilty of a gross misdemeanor.

16 **Sec. 3.** RCW 69.43.020 and 1988 c 147 s 2 are each amended to read
17 as follows:

18 (1) ~~((Beginning on July 1, 1988,))~~ Any manufacturer, wholesaler,
19 retailer, or other person ~~((subject to any other reporting requirements~~
20 ~~in this chapter,))~~ who receives from a source outside of this state any
21 substance specified in RCW 69.43.010(1)~~((7))~~ shall submit a report of
22 such transaction to the state board of pharmacy under rules adopted by
23 the board.

24 (2) Any person specified in subsection (1) of this section who does
25 not submit a report as required by subsection (1) of this section is
26 guilty of a gross misdemeanor.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 69.43 RCW
28 to read as follows:

29 (1) Any manufacturer or wholesaler who sells, transfers, or
30 otherwise furnishes any substance specified in RCW 69.43.010(1) to any
31 person in a suspicious transaction shall report the transaction in
32 writing to the state board of pharmacy.

33 (2) Any person specified in subsection (1) of this section who does
34 not submit a report as required by subsection (1) of this section is
35 guilty of a gross misdemeanor.

36 (3) For the purposes of this section, "suspicious transaction"
37 means a sale or transfer to which any of the following applies:

1 (a) The circumstances of the sale or transfer would lead a
2 reasonable person to believe that the substance is likely to be used
3 for the purpose of unlawfully manufacturing a controlled substance
4 under chapter 69.50 RCW, based on such factors as the amount involved,
5 the method of payment, the method of delivery, and any past dealings
6 with any participant in the transaction. The state board of pharmacy
7 shall adopt by rule criteria for determining whether a transaction is
8 suspicious, taking into consideration the recommendations in appendix
9 A of the report to the United States attorney general by the suspicious
10 orders task force under the federal comprehensive methamphetamine
11 control act of 1996.

12 (b) The transaction involves payment for any substance specified in
13 RCW 69.43.010(1) in cash or money orders in a total amount of more than
14 two hundred dollars.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 69.43 RCW
16 to read as follows:

17 (1) Any manufacturer or wholesaler who sells, transfers, or
18 otherwise furnishes any substance specified in RCW 69.43.010(1) to any
19 person shall maintain a record of each such sale or transfer. The
20 records must contain:

21 (a) The name of the substance;

22 (b) The quantity of the substance sold, transferred, or furnished;

23 (c) The date the substance was sold, transferred, or furnished;

24 (d) The name and address of the person buying or receiving the
25 substance; and

26 (e) The method of and amount of payment for the substance.

27 (2) The records of sales and transfers required by this section
28 shall be available for inspection by the state board of pharmacy and
29 its authorized representatives and shall be maintained for two years.

30 (3) A violation of this section is a gross misdemeanor.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.43 RCW
32 to read as follows:

33 A manufacturer, wholesaler, retailer, or other person who sells,
34 transfers, or otherwise furnishes any substance specified in RCW
35 69.43.010(1) and who is subject to the reporting or recordkeeping
36 requirements of this chapter may satisfy the requirements by submitting
37 to the state board of pharmacy, and its authorized representatives:

1 (1) Computer readable data from which all of the required
2 information may be readily derived; or

3 (2) Copies of reports that are filed under federal law that contain
4 all of the information required by the particular reporting or
5 recordkeeping requirement of this chapter which it is submitted to
6 satisfy.

7 **Sec. 7.** RCW 69.43.040 and 1989 1st ex.s. c 9 s 441 are each
8 amended to read as follows:

9 (1) The department of health, in accordance with rules developed by
10 the state board of pharmacy shall provide a common reporting form for
11 the substances in RCW 69.43.010 that contains at least the following
12 information:

13 (a) Name of the substance;

14 (b) Quantity of the substance sold, transferred, or furnished;

15 (c) The date the substance was sold, transferred, or furnished;

16 (d) The name and address of the person buying or receiving the
17 substance; and

18 (e) The name and address of the manufacturer, wholesaler, retailer,
19 or other person selling, transferring, or furnishing the substance.

20 (2) Monthly reports authorized under (~~subsection (1)(e) of this~~
21 ~~section~~) RCW 69.43.010(4) may be computer-generated in accordance with
22 rules adopted by the department.

23 **Sec. 8.** RCW 69.43.090 and 1989 1st ex.s. c 9 s 443 are each
24 amended to read as follows:

25 (1) Any manufacturer, wholesaler, retailer, or other person who
26 sells, transfers, or otherwise furnishes any substance specified in RCW
27 69.43.010 to ((a)) any person (~~(in this state)~~) or who receives from a
28 source outside of the state any substance specified in RCW 69.43.010
29 shall obtain a permit for the conduct of that business from the state
30 board of pharmacy. However, a permit shall not be required of any
31 manufacturer, wholesaler, retailer, or other person for the sale,
32 transfer, furnishing, or receipt of any drug that contains ephedrine,
33 phenylpropanolamine, or pseudoephedrine, or of any cosmetic that
34 contains a substance specified in RCW 69.43.010(1), if such drug or
35 cosmetic is lawfully sold, transferred, or furnished over the counter
36 without a prescription or by a prescription under chapter 69.04 or
37 69.41 RCW.

1 (2) Applications for permits shall be filed with the department in
2 writing and signed by the applicant, and shall set forth the name of
3 the applicant, the business in which the applicant is engaged, the
4 business address of the applicant, and a full description of any
5 substance sold, transferred, or otherwise furnished, or received.

6 (3) The board may grant permits on forms prescribed by it. The
7 permits shall be effective for not more than one year from the date of
8 issuance.

9 (4) Each applicant shall pay at the time of filing an application
10 for a permit a fee determined by the department.

11 (5) A permit granted under this chapter may be renewed on a date to
12 be determined by the board, and annually thereafter, upon the filing of
13 a renewal application and the payment of a permit renewal fee
14 determined by the department.

15 (6) Permit fees charged by the department shall not exceed the
16 costs incurred by the department in administering this chapter.

17 (7) Selling, transferring, or otherwise furnishing, or receiving
18 any substance specified in RCW 69.43.010 without a required permit, is
19 a gross misdemeanor.

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

22 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or
23 itinerant vendor registered with, the department of health under
24 chapter 18.64 RCW, or an employee thereof, to sell, transfer, or
25 otherwise furnish, in a single transaction:

26 (a) More than three packages of one or more products that he or she
27 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine,
28 their salts, isomers, or salts of isomers; or

29 (b) A single package of any product that he or she knows to contain
30 ephedrine, pseudoephedrine, or phenylpropanolamine, which contains more
31 than: (i) Ninety-six pills, tablets, gelcaps, capsules, or other
32 individual units; or (ii) three grams of ephedrine, pseudoephedrine, or
33 phenylpropanolamine, their salts, isomers, or salts of isomers, or a
34 combination of any of these substances.

35 (2) A violation of this section is a gross misdemeanor.

36 NEW SECTION. **Sec. 10.** A new section is added to chapter 69.43 RCW
37 to read as follows:

1 (1) Any person who possesses more than fifteen grams of ephedrine,
2 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
3 of isomers, or a combination of any of those substances, is guilty of
4 a gross misdemeanor.

5 (2) This section does not apply to any of the following:

6 (a) A pharmacist or other authorized person who sells or furnishes
7 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts,
8 isomers, or salts of isomers upon the prescription of a practitioner,
9 as defined in RCW 69.41.010;

10 (b) A practitioner who administers or furnishes ephedrine,
11 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
12 of isomers to his or her patients;

13 (c) A pharmacy, manufacturer, or wholesaler licensed by, or
14 shopkeeper or itinerant vendor registered with, the department of
15 health under chapter 18.64 RCW;

16 (d) A person in the course of his or her business of selling,
17 transporting, or storing ephedrine, pseudoephedrine, or
18 phenylpropanolamine, their salts, isomers, or salts of isomers, for a
19 person described in (a), (b), or (c) of this subsection.

20 NEW SECTION. **Sec. 11.** A new section is added to chapter 69.43 RCW
21 to read as follows:

22 Sections 9 and 10 of this act do not apply to:

23 (1) Pediatric products primarily intended for administration to
24 children under twelve years of age, according to label instructions,
25 either: (a) In solid dosage form whose individual dosage units do not
26 exceed fifteen milligrams of ephedrine, pseudoephedrine, or
27 phenylpropanolamine; or (b) in liquid form whose recommended dosage,
28 according to label instructions, does not exceed fifteen milligrams of
29 ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters
30 of liquid product;

31 (2) Pediatric liquid products primarily intended for administration
32 to children under two years of age for which the recommended dosage
33 does not exceed two milliliters and the total package content does not
34 exceed one fluid ounce; or

35 (3) Products that the state board of pharmacy, upon application of
36 a manufacturer, exempts by rule from sections 9 and 10 of this act
37 because the product has been formulated in such a way as to effectively

1 prevent the conversion of the active ingredient into methamphetamine,
2 or its salts or precursors.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 69.43 RCW
4 to read as follows:

5 (1) In addition to the other penalties provided for in this chapter
6 or in chapter 18.64 RCW, the state board of pharmacy may impose a civil
7 penalty, not to exceed ten thousand dollars for each violation, on any
8 licensee or registrant who has failed to comply with this chapter or
9 the rules adopted under this chapter. In the case of a continuing
10 violation, every day the violation continues shall be considered a
11 separate violation.

12 (2) The state board of pharmacy may waive the suspension or
13 revocation of a license or registration issued under chapter 18.64 RCW,
14 or waive any civil penalty under this chapter, if the licensee or
15 registrant establishes that he or she acted in good faith to prevent
16 violations of this chapter, and the violation occurred despite the
17 licensee's or registrant's exercise of due diligence. In making such
18 a determination, the state board of pharmacy may consider evidence that
19 an employer trained employees on how to sell, transfer, or otherwise
20 furnish substances specified in RCW 69.43.010(1) in accordance with
21 applicable laws.

22 NEW SECTION. **Sec. 13.** A new section is added to chapter 69.43 RCW
23 to read as follows:

24 This chapter is applicable and uniform throughout this state and in
25 all counties, cities, code cities, and towns therein. A county, city,
26 code city, or town may not adopt or enforce any ordinance, pertaining
27 to this chapter, which prohibits conduct that is not prohibited under
28 this chapter, or defining violations or penalties different from those
29 provided under this chapter. However, this section does not preclude
30 a county, city, code city, or town from revoking, canceling,
31 suspending, or otherwise limiting a business or professional license it
32 has issued for conduct that violates any provision of this chapter.

33 NEW SECTION. **Sec. 14.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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