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**Criminal Justice & Corrections  
Committee**

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**HB 2844**

**Brief Description:** Increasing the regulation of the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

**Sponsors:** Representatives Lovick, Morrell, Benson, Campbell, Simpson, G., Bush, Quall, Uptegrove and Schual-Berke; by request of Department of Health and Washington State Patrol.

**Brief Summary of Bill**

- Provides that any shopkeeper that sells ephedrine, pseudoephedrine, and phenylpropanolamine without being registered is guilty of a class C felony.
- Provides that shopkeepers and itinerant vendors may only purchase ephedrine, pseudoephedrine, and phenylpropanolamine from a wholesaler that is licensed by the Department of Health.
- Limits the quantity of ephedrine, pseudoephedrine, and phenylpropanolamine that shopkeepers, itinerant vendors, and wholesalers may sell on a monthly basis.
- Requires shopkeepers and itinerant vendors to maintain inventory records of the receipt and distribution of ephedrine, pseudoephedrine, and phenylpropanolamine substances.
- Requires all wholesalers who do business in Washington to be licensed by the Department of Health.

**Hearing Date:** 1/27/04

**Staff:** Yvonne Walker (786-7841).

**Background:**

Precursor drugs are substances that can be used to manufacture controlled substances. For example, ephedrine, pseudoephedrine, or phenylpropanolamine are common precursor items that are often used to illegally manufacture methamphetamine. Methamphetamine is a highly addictive substance that affects the central nervous system.

In 2001, the Legislature passed legislation (ESSB 5017) that placed restrictions on the sale and distribution of ephedrine, pseudoephedrine, or phenylpropanolamine. The legislation instituted a number of measures including the following:

- Providing reporting and record keeping requirements for the sale of these precursor substances. Failure to maintain adequate records is a gross misdemeanor offense;
- Restricting the retail sale of the precursor substances to three packages (with a single package containing less than 3 grams) in a single transaction. A violation of this offense is a gross misdemeanor;
- Making it a gross misdemeanor offense for a person (excluding, but not limited to, practitioners, pharmacies, and manufacturers) to possess more than 15 grams of the precursor substances;
- Authorizing the Washington State Board of Pharmacy (Board) to impose a civil penalty ranging up to \$10,000 for violations of precursor drug laws; and
- Requiring retailers to program scanning and related equipment to prevent illegal purchases or to post signs on the premises to alert customers and employees of the law.

#### Shopkeeper.

*Shopkeeper's Registration:* A shopkeeper may sell nonprescription drugs provided that: (1) the drugs are sold in the original package; and (2) the shopkeeper has obtained his or her shopkeeper's registration through the master license system and maintained renewal of that registration thereafter. A shopkeeper must pay a fee, as determined by the Department of Health (DOH), in order to obtain his or her shopkeeper's registration. The fee cannot exceed the actual cost of registering the shopkeeper.

A shopkeeper's current registration must be conspicuously exposed in his or her shop at all times. Any shopkeeper who sells to the public any nonprescription drug without having obtained a registration to do so is guilty of a misdemeanor offense and each sale or offer to sell constitutes a separate offense.

Itinerant Vendor & Peddler. Any itinerant vendor or peddler selling nonprescription drugs or any treatment for a disease or injury is required to obtain a itinerant vendor's or peddler's registration. In order to obtain a license, the vendor or peddler must submit an application to the DOH and pay a registration fee (as determined by the Secretary of the DOH).

Any itinerant vendor or peddler who sells nonprescription drugs to the public without having a valid registration is guilty of a misdemeanor. Each sale or offer to sell constitutes a separate offense. In the event that the registration fee remains unpaid on the date due, no renewal or new registration will be issued until the wholesales comes into compliance with the administrative requirements and fees.

#### Wholesaler.

*Wholesaler's License:* A wholesaler may sell legend (prescription) drugs and nonprescription drugs provided that he or she is licensed to do so. The wholesaler must pay a license fee (as determined by the Secretary of DOH) in order to obtain a wholesaler's license for the selling of legend drugs and nonprescription drugs at a specific location for a specified time period. The license must be renewed by the wholesaler upon expiration. In the event the license fee remains unpaid on the date due, no renewal or new license will be issued until the wholesales comes into compliance with the administrative requirements and fees.

Failure to notify the DOH of any change of location or ownership of the wholesaler's business, or to keep the license or renewal of license properly exhibited in his or her place of business is a misdemeanor offense. Each day that the offense continues constitutes a separate offense. A misdemeanor offense is punishable by imprisonment in the county jail for a maximum term of not more than 90 days, or by a fine of not more than \$1,000, or both.

### **Summary of Bill:**

The Legislature finds that the quantities of ephedrine, pseudoephedrine, or phenylpropanolamine continue to be sold at levels that are far in excess of legitimate consumer needs. This means that the substances are more than likely being used for the illegal manufacture of methamphetamine. It is a gross misdemeanor offense for any person to sell or distribute these precursor substances unless the person is licensed by or registered with the DOH.

#### Shopkeepers, Itinerant Vendors, & Peddlers.

*Shopkeeper's Registration:* It is an unranked class C felony offense for any shopkeeper convicted of selling or offering to sell to the public any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, without having obtained a shopkeeper's registration to do so. Each sale or offer to sell constitutes a separate offense. The maximum penalty for an unranked felony offense is 12 months in jail.

*Purchasing Precursor Substances:* It is a gross misdemeanor offense for a shopkeeper to purchase ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from anyone other than a licensed wholesaler or a licensed manufacturer. Each purchase in violation of this offense constitutes a separate offense. A gross misdemeanor is punishable by imprisonment in the county jail for a maximum term of not more than one year, or by a fine of not more than \$5,000, or both.

*Selling Precursor Substances:* It is prohibited for any shopkeeper, itinerant vendor, or peddler to sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total prior monthly sales of these products exceed 10 percent of the shopkeeper's total prior monthly sales of nonprescription drugs in March through October. In November through February, no shopkeeper may sell any quantity of these precursor substances, if the total prior monthly sales of these products exceed 20 percent of the shopkeeper's total prior monthly sales of nonprescription drugs.

*Record Retention:* Shopkeepers, itinerant vendors, and peddlers are required to maintain records of the receipt and disposition of ephedrine, pseudoephedrine, phenylpropanolamine, their salts, isomers, and salts of isomers, in the form and manner required by the Board. The records must be available for inspection by the Board or any law enforcement agency and must be maintained for two years. The Board may suspend or revoke the registration of a shopkeeper who fails to maintain adequate records for the receipt and disposition of the precursor substances.

#### Wholesaler.

*Wholesaler's License:* The requirements for a wholesaler's license apply to all persons, in Washington and outside of Washington, who sell legend and non prescription drugs, at wholesale to pharmacies, practitioners, and shopkeepers in Washington.

*Selling Precursor Substances:* It is prohibited for any wholesaler to sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,

if the total prior monthly sales of these products to persons within Washington exceed 5 percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state in March through October. In November through February, no wholesaler may sell any quantity of these precursor substances, if the total prior monthly sales of these products sold to customers within Washington exceed 10 percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state.

Washington State Board of Pharmacy. In addition, the Board may also suspend or revoke the registration of a shopkeeper, wholesaler, itinerant vendor, or peddler who violates the selling restrictions on precursor substances after July 1, 2006, the Board may by rule raise or lower the percentage that limits the amount of ephedrine, pseudoephedrine, or phenylpropanolamine that may be sold.

"Monthly Sales" is defined as total dollars paid by buyers.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2004.