

HOUSE BILL REPORT

HB 2844

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to further regulation of the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

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 History:

Committee Activity:

Criminal Justice & Corrections: 1/27/04, 2/3/04 [DPS].

Brief Summary of Substitute Bill

- Makes it a class C felony for a wholesaler to sell ephedrine products directly to consumers.
- Provides that shopkeepers and itinerant vendors may only purchase products containing ephedrine, pseudoephedrine, and phenylpropanolamine from a wholesaler or manufacturer 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.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

Minority Report: Without recommendation. Signed by 1 member: Representative Mielke, Ranking Minority Member.

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, and 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, if in violation of this offense it 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.

Shopkeepers, Itinerant Vendors, & Peddlers

A shopkeeper may sell nonprescription drugs provided that: (1) the drugs are sold in the original package; and (2) the shopkeeper has obtained a shopkeeper's registration. In order to obtain a shopkeeper's registration a shopkeeper must pay a fee, as determined by the Department of Health (DOH). The fee, however, cannot exceed the actual cost of registering the shopkeeper.

Any itinerant vendor or peddler selling nonprescription drugs or any treatment for a disease or injury is also required to obtain an 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 shopkeeper, 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.

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 the 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 wholesaler 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 Substitute 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 ephedrine products, unless the person is licensed by or registered with the DOH. Physicians may distribute ephedrine products, however they are restricted from distributing no more than three packages (with a single package containing less than 3 grams) to a single person.

Shopkeepers, Itinerant Vendors, & Peddlers

Purchasing Precursor Substances: An itinerant vendor may only purchase ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a licensed wholesaler or manufacturer.

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 seller's total prior monthly sales of nonprescription drugs in March through October. In November through February, no shopkeeper vendor, or peddler may sell any quantity of these precursor substances, if the total prior monthly sales of these products exceed 20 percent of the seller's total prior monthly sales of nonprescription drugs.

Record Retention: Shopkeepers, itinerant vendors, and peddlers are required to maintain records, in the form and manner required by the Board, of the receipt and sell of all nonprescription drugs. 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 nonprescription drugs, at wholesale to pharmacies, practitioners, and shopkeepers in Washington.

Selling Precursor Substances: It is prohibited for any wholesaler to sell any quantity of drug products containing 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 during the months of March through October. In November through February, a wholesaler is prohibited from selling any quantity of these precursor substances, if the total prior monthly sales of these products exceed 10 percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state.

It is an unranked class C felony offense for any wholesaler to sell any quantity of products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, to any person or retailer who is not a licensed pharmacy, shopkeeper, itinerant vendor, or practitioner. Each sale constitutes a separate offense.

Washington State Board of Pharmacy

The Board must share suspicious reports it receives of retailers selling illegal amounts of ephedrine products to the Department of Revenue. In addition, the Board may suspend or revoke the registration of a shopkeeper, wholesaler, itinerant vendor, or peddler who violates the selling restrictions on precursor substances.

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

Substitute Bill Compared to Original Bill:

A provision is deleted that stated that after July 1, 2006, the Board had the authority to change the percentage limits of the amount of ephedrine, pseudoephedrine, or phenylpropanolamine that may be sold by shopkeepers, vendors, and wholesalers. The provision that increased the misdemeanor penalty to a class C felony penalty for shopkeepers that sell ephedrine,

pseudoephedrine, and phenylpropanolamine without being registered is deleted. The record-keeping requirements are expanded to all non-prescription drugs (instead of just the three precursor drugs), to enable the Board to verify whether shopkeepers and vendors are complying with percentage limits on sales of ephedrine products. A provision is added that makes it a class C felony crime for wholesalers to sell precursor products directly to consumers. Language is added to clarify that physicians and other professions authorized to prescribe drugs, may give samples of ephedrine products to patients, not to exceed the existing three box, nine-gram limit for retail sales. A provision is added to require the Board to share suspicious transaction reports it receives with the Department of Revenue. The bill also makes other clarifications.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2004.

Testimony For: Methamphetamine (meth) is devastating to our local communities and to our entire state. The DOH has been working closely with a number of entities around the state including the WSP to reduce the meth problem. Last year the Department of Ecology responded to over 4,000 meth labs across the state. The problem is that most of the raw materials used to make meth is available right here in our own state from local wholesalers and retailers. Two of the key ingredients for the drug are ephedrine and pseudoephedrine which can be found in nonprescription drugs for colds and allergies.

Three years ago the Legislature passed legislation that made it harder for methamphetamine users to buy precursor items over the counter. However, the law did not make it harder for retailers and wholesalers to sell these items in bulk out the back door to meth cooks. In addition, the Legislature also required wholesalers and retailers to report suspicious sales activity. Last year, the Board found that 500 convenience stores across the state had received more than six million of these doses from wholesalers across the state under suspicious circumstances.

Methamphetamine leads to many other problems around the state such as environmental problems, domestic violence, drug addicted children, and identity theft. This bill is intended to crack down on retailers who clearly buy exorbitant amounts of these nonprescription items and on wholesalers who supply them with the drugs. It is suggested that the iodine drug may also be added as a regulated drug similar to the way the state of Oregon regulates the drug.

The county commissioners and sheriffs support this bill. The Governor's supplemental budget includes funding for implementation of this bill.

Testimony Against: With all the licensing requirements that not only the state requires, but also those that counties and municipalities require, the bill should ensure that legitimate shopkeepers are clearly notified that they need to register. There may be situations where

legitimate shopkeepers just forget or overlook the requirement to register. Legitimate shopkeepers should not be convicted of a class C felony. (The substitute bill amends this provision).

Persons Testifying: (In support) Representative Lovick, prime sponsor; Representative Morrell, co-sponsor; Ron Weaver, Department of Health; Captain Mark Coney, Washington State Patrol; Sergeant Tim Zweiger, Washington State Patrol; and Sharon Wylie, Clark County.

(Opposed) T. K. Bentler, Washington Association of Neighborhood Stores.

Persons Signed In To Testify But Not Testifying: None.