

HOUSE BILL REPORT

ESSB 6478

As Passed House:

March 2, 2004

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: By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Brandland, Franklin, Deccio, Rasmussen, McCaslin, Murray, B. Sheldon, Parlette, Winsley and Regala; by request of Department of Health and Washington State Patrol).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/20/04, 2/25/04 [DP].

Floor Activity:

Passed House: 3/2/04, 95-0.

Brief Summary of Engrossed 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 (DOH).
- Limits the quantity of ephedrine, pseudoephedrine, and phenylpropanolamine that specific shopkeepers, itinerant vendors, and all wholesalers may sell on a monthly basis.
- Requires specific shopkeepers and itinerant vendors, that have purchased suspicious amounts of ephedrine products, to limit their sales and to maintain inventory records of the receipt and disposition of ephedrine, pseudoephedrine, and phenylpropanolamine substances.
- Requires all wholesalers who do business in Washington to be licensed by the DOH.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

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 making the failure to maintain adequate records 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 and making a violation of this offense 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;
- 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; and
- Requiring manufacturers and wholesalers to report suspicious transactions of precursor drugs to the Board.

"Suspicious transactions" are sales under circumstances leading a reasonable person to believe the substance is likely to be used for making a controlled substance, based on the following factors: (1) the amount involved; (2) the payment method (cash or money orders exceeding \$200); (3) the delivery method; and (4) any past dealings with the buyer.

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 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 registration, the vendor or peddler must submit an application to the DOH and pay a registration fee, as determined by 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 offense. 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 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.

The 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 a 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 ephedrine products, unless the person is licensed or registered with the DOH. Similar to pharmacists and retailers, physicians are limited from distributing no more than three packages (with a single package containing less than 3 grams) of ephedrine products in a single transaction.

In addition, although retailers are restricted to the same three package (3 grams per package) limitation when selling ephedrine products, the Board may exempt specific packaging of ephedrine products from the existing 3 gram limitation when: (1) the product meets the federal definition of an ordinary over-the-counter pseudoephedrine product; (2) the ephedrine product has a total weight of more than 3 grams but the net weight of the pseudoephedrine base is equal to or less than 3 grams; and (3) the Board determines that the product has not

been used in the illegal manufacture of methamphetamine and that the value to people having the product, as packaged, outweighs its danger.

Shopkeepers & Itinerant Vendors

Purchasing Precursor Substances: An itinerant vendor or shopkeeper (who is not a licensed pharmacy) may only purchase ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, from a licensed wholesaler or manufacturer. If a violation of this restriction occurs, then the Board must issue a warning to the vendor or shopkeeper. The Board may also suspend or revoke the vendor's or shopkeeper's registration for a subsequent violation.

Selling Precursor Substances: Two limitations are set for any shopkeeper (who is not a licensed pharmacy) or itinerant vendor who has been reported for purchasing ephedrine products in a suspicious transaction. First, the shopkeeper or vendor may not 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. Second, the shopkeeper or vendor is required to maintain records, utilizing either existing inventory controls or in the form and manner required by the Board, of the receipt and disposition 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 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. The Board may suspend or revoke the wholesaler's registration for a violation of the selling limitation.

Wholesalers may be exempt from these requirements, if the Board finds that the wholesaler distributes nonprescription drugs between divisions or companies that are related by common ownership and neither entity has ever engaged or had a history of distributing suspicious amounts of precursor drugs.

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 in Washington who is not a licensed or registered 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 with the Department of Revenue.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Methamphetamine is reaching epidemic proportions. This bill strikes right at the heart of the sale of precursor drugs. There has been instances where, in a six month period, small corner grocery stores are selling nearly 108,000 doses of ephedrine products. Group Health who serves over 400,000 people only issued 52,000 doses in the same time period.

The elements of the bill will allow the Washington State Patrol to eliminate the selling of illegal amounts of ephedrine products. This bill will not punish legitimate people. It gets at the people that sell suspicious and questionable amounts of ephedrine products and specifically targets those retailers or bad actors who sell large quantities of ephedrine products to methamphetamine dealers.

Testimony Against: None.

Persons Testifying: (In support) Senator Brandland, prime sponsor; Lis Merten, National Association of Chain Drug Stores; T. R. Zweiger, Washington State Patrol; and Don Williams, Department of Health Board of Pharmacy.

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

Persons Signed In To Testify But Not Testifying: None.