

# SENATE BILL REPORT

## ESSB 6478

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As Passed Senate, February 13, 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:** 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:** Health & Long-Term Care: 1/29/04, 2/4/04 [DPS].

Passed Senate: 2/13/04, 45-0.

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### SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

**Majority Report:** That Substitute Senate Bill No. 6478 be substituted therefor, and the substitute bill do pass.

Signed by Senators Deccio, Chair; Winsley, Vice Chair; Brandland, Franklin, Keiser, Parlette and Thibaudeau.

**Staff:** Tanya Karwaki (786-7447)

**Background:** Precursor drugs are substances that can be used to manufacture controlled substances. Ephedrine, pseudoephedrine, and phenylpropanolamine are precursor substances used in manufacturing methamphetamine.

In 2001, legislation was enacted restricting the sale and distribution of ephedrine, pseudoephedrine, and phenylpropanolamine. It is a gross misdemeanor to sell at retail more than three packages of products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or a single package containing more than three grams in a single transaction. Retailers of products containing ephedrine compounds may take either of two measures to prevent their unlawful sale and purchase: (1) they may program their registers to alert sales persons of potential violations, or (2) they may place signs on the premises to notify customers of the law.

Manufacturers and wholesalers are required to report suspicious transactions in precursor drugs to the Board of Pharmacy. "Suspicious transactions" are sales under circumstances leading a reasonable person to believe the substance is likely to be used for making a controlled substance, or for more than \$200 in cash. The Board of Pharmacy was authorized to establish criteria in rule for determining whether a transaction is suspicious, and the board has adopted such rules.

**Summary of Bill:** Shopkeepers, who are not licensed pharmacies, and itinerant vendors may purchase ephedrine, pseudoephedrine, or phenylpropanolamine only from wholesalers or manufacturers licensed by the Department of Health. A shopkeeper or itinerant vendor who violates this must be warned by the Board of Pharmacy. If the shopkeeper or itinerant vendor commits a subsequent violation, the Board of Pharmacy may suspend or revoke their registration.

Shopkeepers and itinerant vendors who purchase ephedrine products in a suspicious transaction are subject to percentage-of-sales and record-keeping requirements. Such shopkeepers and itinerant vendors may not sell any quantity of ephedrine products if the total prior monthly sales of these products exceed 10 percent of the shopkeeper's or itinerant vendor's total monthly sales of nonprescription drugs in March through October, or 20 percent from November through February. The board may suspend or revoke the license of a shopkeeper or itinerant vendor who violates this limitation. Such shopkeepers and itinerant vendors must also maintain inventory records of the receipt and disposition of nonprescription drugs. Records must be available for inspection by the board or any law enforcement agency and shall be maintained for two years. The board may suspend or revoke the shopkeeper's or itinerant vendor's registration for violating this record requirement.

No wholesalers may sell any quantity of ephedrine products if the total prior monthly sales of these products to persons in Washington exceeds 5 percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons in Washington in March through October. This limit is 10 percent for November through February. The board may suspend or revoke the license of a wholesaler that violates this limitation. The board may exempt a wholesaler from this limitation if the wholesaler is related by common ownership to the retailer and neither the wholesaler nor the retailer has a history of suspicious transactions in precursor drugs.

Wholesalers located in Washington and outside of Washington who sell both legend drugs and nonprescription drugs, and those who sell only nonprescription drugs to pharmacies, practitioners, and shopkeepers in Washington must be licensed by the Department of Health. Wholesalers are prohibited from selling any quantity of ephedrine products to any person in Washington other than a licensed pharmacy, shopkeeper or itinerant vendor registered in Washington, or a practitioner. A violation of this prohibition is punishable as a class C felony.

It is unlawful for any person to sell or distribute ephedrine products unless the person is licensed or registered by the Department of Health under the statute concerning pharmacists or is a practitioner as defined in statute.

Practitioners authorized to prescribe drugs may sell, transfer or otherwise furnish ephedrine products as long as a single transaction does not exceed the three package, three gram limitation.

The Board of Pharmacy must transmit to the Department of Revenue a copy of each report of a suspicious transaction that it receives.

The Board of Pharmacy may exempt specific ephedrine products from the sales restriction, upon application of a manufacturer, if the product meets the federal definition of an ordinary

over-the-counter pseudoephedrine product, or the net weight of the pseudoephedrine base is equal to or less than three grams, even though the package's total weight exceeds three grams, and the board determines that the value of the product to the people of Washington outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** 300 to 400 stores are not abiding the 2001 law. Washington is sixth in the nation for the number of methamphetamine laboratories that are discovered. This bill would eliminate the amount of precursor drugs available.

**Testimony Against:** Any restriction should be done in the form of restricting the amount that goes to a store. If that amount is exceeded, then the store is in violation of the act. Legitimate retailers are not aware of the need to register, so it is unfair to also make them susceptible to a class C felony. Stores do not need additional record-keeping responsibilities.

**Testified:** Mark Couey, Tom Zweigert, WSP (pro); Don Williams, DOH, Board of Pharmacy (pro); T.K. Bentler, WA Assn. of Neighborhood Stores (con).