

SENATE BILL REPORT

SB 6478

As Reported By Senate Committee On:
Health & Long-Term Care, February 4, 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: 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].

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 Substitute Bill: Shopkeepers may purchase ephedrine, pseudoephedrine, or phenylpropanolamine only from wholesalers or manufacturers licensed by the Department of Health; a shopkeeper who violates this is guilty of a gross misdemeanor.

Itinerant vendors may purchase ephedrine, pseudoephedrine, or phenylpropanolamine products only from wholesalers or manufacturers licensed by the Department of Health.

No shopkeeper or itinerant vendor may sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine 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.

Shopkeepers and itinerant vendors must maintain inventory records of the receipt and disposition of nonprescription drugs as required by the board. 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 products containing ephedrine, pseudoephedrine, or phenylpropanolamine 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.

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.

It is unlawful for any person to sell or distribute ephedrine products unless the person is 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 or shopkeeper or itinerant vendor registered in Washington, or a practitioner. A violation of this prohibition is punishable as a class C felony.

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.

Substitute Bill Compared to Original Bill: The substitute bill removes: the requirement that registration fees not exceed the cost of administering the chapter; the felony penalty for shopkeepers selling ephedrine products without being registered; and the grant of authority to the Board of Pharmacy to alter the percentage limits by rule. It also expands the recordkeeping requirements to include all nonprescription drugs, makes it a felony for a

wholesaler to sell ephedrine products to any person in Washington other than a licensed pharmacy, a registered shopkeeper or itinerant vendor, or a practitioner, and clarifies that practitioners with the authority to prescribe drugs may provide ephedrine products to others as long as the existing three package, three gram limit is not exceeded. Finally, the Board of Pharmacy must share suspicious transaction reports with the Department of Revenue.

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).