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**ENGROSSED SUBSTITUTE SENATE BILL 6478**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**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)

READ FIRST TIME 02/06/04.

1       AN ACT Relating to further regulation of the sale of ephedrine,  
2 pseudoephedrine, and phenylpropanolamine; amending RCW 18.64.046,  
3 18.64.047, 69.43.110, 69.43.035, and 69.43.130; reenacting and amending  
4 RCW 18.64.044; creating a new section; prescribing penalties; and  
5 providing an effective date.

6       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       NEW SECTION. **Sec. 1.** The legislature finds that quantities of  
8 ephedrine, pseudoephedrine, and phenylpropanolamine continue to be sold  
9 at the wholesale and retail levels far in excess of legitimate consumer  
10 needs. The excess quantities being sold are most likely used in the  
11 criminal manufacture of methamphetamine. It is therefore necessary for  
12 the legislature to further regulate the sales of these drugs, including  
13 sales from out-of-state sources, in order to reduce the threat that  
14 methamphetamine presents to the people of the state.

15       **Sec. 2.** RCW 18.64.044 and 1989 1st ex.s. c 9 s 401 and 1989 c 352  
16 s 1 are each reenacted and amended to read as follows:

17       (1) A shopkeeper registered as provided in this section may sell

1 nonprescription drugs, if such drugs are sold in the original package  
2 of the manufacturer.

3 (2) Every shopkeeper not a licensed pharmacist, desiring to secure  
4 the benefits and privileges of this section, is hereby required to  
5 register as a shopkeeper through the master license system, and he or  
6 she shall pay the fee determined by the secretary for registration, and  
7 on a date to be determined by the secretary thereafter the fee  
8 determined by the secretary for renewal of the registration; and shall  
9 at all times keep said registration or the current renewal thereof  
10 conspicuously exposed in the (~~shop~~) location to which it applies. In  
11 event such shopkeeper's registration is not renewed by the master  
12 license expiration date, no renewal or new registration shall be issued  
13 except upon payment of the registration renewal fee and the master  
14 license delinquency fee under chapter 19.02 RCW. This registration fee  
15 shall not authorize the sale of legend drugs or controlled substances.

16 (3) The registration fees determined by the secretary under  
17 subsection (2) of this section shall not exceed the cost of registering  
18 the shopkeeper.

19 (4) Any shopkeeper who shall vend or sell, or offer to sell to the  
20 public any such nonprescription drug or preparation without having  
21 registered to do so as provided in this section, shall be guilty of a  
22 misdemeanor and each sale or offer to sell shall constitute a separate  
23 offense.

24 (5) A shopkeeper who is not a licensed pharmacy may purchase  
25 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,  
26 isomers, or salts of isomers, only from a wholesaler licensed by the  
27 department under RCW 18.64.046 or from a manufacturer licensed by the  
28 department under RCW 18.64.045. The board shall issue a warning to a  
29 shopkeeper who violates this subsection, and may suspend or revoke the  
30 registration of the shopkeeper for a subsequent violation.

31 (6) A shopkeeper who has purchased ephedrine, pseudoephedrine, or  
32 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
33 a suspicious transaction as defined in RCW 69.43.035, is subject to the  
34 following requirements:

35 (a) The shopkeeper may not sell any quantity of ephedrine,  
36 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
37 salts of isomers, if the total monthly sales of these products exceed  
38 ten percent of the shopkeeper's total prior monthly sales of

1 nonprescription drugs in March through October. In November through  
2 February, the shopkeeper may not sell any quantity of ephedrine,  
3 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
4 salts of isomers, if the total monthly sales of these products exceed  
5 twenty percent of the shopkeeper's total prior monthly sales of  
6 nonprescription drugs. For purposes of this section, "monthly sales"  
7 means total dollars paid by buyers. The board may suspend or revoke  
8 the registration of a shopkeeper who violates this subsection.

9 (b) The shopkeeper shall maintain inventory records of the receipt  
10 and disposition of nonprescription drugs, utilizing existing inventory  
11 controls if an auditor or investigator can determine compliance with  
12 (a) of this subsection, and otherwise in the form and manner required  
13 by the board. The records must be available for inspection by the  
14 board or any law enforcement agency and must be maintained for two  
15 years. The board may suspend or revoke the registration of a  
16 shopkeeper who violates this subsection. For purposes of this  
17 subsection, "disposition" means the return of product to the wholesaler  
18 or distributor.

19 **Sec. 3.** RCW 18.64.046 and 2003 c 53 s 133 are each amended to read  
20 as follows:

21 (1) The owner of each place of business which sells legend drugs  
22 and nonprescription drugs, or nonprescription drugs at wholesale shall  
23 pay a license fee to be determined by the secretary, and thereafter, on  
24 or before a date to be determined by the secretary as provided in RCW  
25 43.70.250 and 43.70.280, a like fee to be determined by the secretary,  
26 for which the owner shall receive a license of location from the  
27 department, which shall entitle such owner to either sell legend drugs  
28 and nonprescription drugs or nonprescription drugs at wholesale at the  
29 location specified for the period ending on a date to be determined by  
30 the secretary, and each such owner shall at the time of payment of such  
31 fee file with the department, on a blank therefor provided, a  
32 declaration of ownership and location, which declaration of ownership  
33 and location so filed as aforesaid shall be deemed presumptive evidence  
34 of the ownership of such place of business mentioned therein. It shall  
35 be the duty of the owner to notify immediately the department of any  
36 change of location and ownership and to keep the license of location or  
37 the renewal thereof properly exhibited in such place of business.

1 (2) Failure to conform with this section is a misdemeanor, and each  
2 day that the failure continues is a separate offense.

3 (3) In event the license fee remains unpaid on the date due, no  
4 renewal or new license shall be issued except upon compliance with  
5 administrative procedures, administrative requirements, and fees  
6 determined as provided in RCW 43.70.250 and 43.70.280.

7 (4) No wholesaler may sell any quantity of drug products containing  
8 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,  
9 isomers, or salts of isomers, if the total monthly sales of these  
10 products to persons within the state of Washington exceed five percent  
11 of the wholesaler's total prior monthly sales of nonprescription drugs  
12 to persons within the state in March through October. In November  
13 through February, no wholesaler may sell any quantity of drug products  
14 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their  
15 salts, isomers, or salts of isomers if the total monthly sales of these  
16 products to persons within the state of Washington exceed ten percent  
17 of the wholesaler's total prior monthly sales of nonprescription drugs  
18 to persons within the state. For purposes of this section, monthly  
19 sales means total dollars paid by buyers. The board may suspend or  
20 revoke the license of any wholesaler that violates this section.

21 (5) The board may exempt a wholesaler from the limitations of  
22 subsection (4) of this section if it finds that the wholesaler  
23 distributes nonprescription drugs only through transactions between  
24 divisions, subsidiaries, or related companies when the wholesaler and  
25 the retailer are related by common ownership, and that neither the  
26 wholesaler nor the retailer has a history of suspicious transactions in  
27 precursor drugs as defined in RCW 69.43.035.

28 (6) The requirements for a license apply to all persons, in  
29 Washington and outside of Washington, who sell both legend drugs and  
30 nonprescription drugs and to those who sell only nonprescription drugs,  
31 at wholesale to pharmacies, practitioners, and shopkeepers in  
32 Washington.

33 (7) No wholesaler may sell any quantity of ephedrine,  
34 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts  
35 of isomers, to any person in Washington other than a pharmacy licensed  
36 under this chapter, a shopkeeper or itinerant vendor registered under  
37 this chapter, or a practitioner as defined in RCW 18.64.011. A

1 violation of this subsection is punishable as a class C felony  
2 according to chapter 9A.20 RCW, and each sale in violation of this  
3 subsection constitutes a separate offense.

4 **Sec. 4.** RCW 18.64.047 and 2003 c 53 s 134 are each amended to read  
5 as follows:

6 (1) Any itinerant vendor or any peddler of any nonprescription drug  
7 or preparation for the treatment of disease or injury, shall pay a  
8 registration fee determined by the secretary on a date to be determined  
9 by the secretary as provided in RCW 43.70.250 and 43.70.280. The  
10 department may issue a registration to such vendor on an approved  
11 application made to the department.

12 (2) Any itinerant vendor or peddler who shall vend or sell, or  
13 offer to sell to the public any such nonprescription drug or  
14 preparation without having registered to do so as provided in this  
15 section, is guilty of a misdemeanor and each sale or offer to sell  
16 shall constitute a separate offense.

17 (3) In event the registration fee remains unpaid on the date due,  
18 no renewal or new registration shall be issued except upon compliance  
19 with administrative procedures, administrative requirements, and fees  
20 determined as provided in RCW 43.70.250 and 43.70.280. This  
21 registration shall not authorize the sale of legend drugs or controlled  
22 substances.

23 (4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or  
24 phenylpropanolamine, or their salts, isomers, or salts of isomers only  
25 from a wholesaler licensed by the department under RCW 18.64.046 or  
26 from a manufacturer licensed by the department under RCW 18.64.045.  
27 The board shall issue a warning to an itinerant vendor who violates  
28 this subsection, and may suspend or revoke the registration of the  
29 vendor for a subsequent violation.

30 (5) An itinerant vendor who has purchased ephedrine,  
31 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
32 salts of isomers, in a suspicious transaction as defined in RCW  
33 69.43.035, is subject to the following requirements:

34 (a) The itinerant vendor may not sell any quantity of ephedrine,  
35 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
36 salts of isomers, if the total monthly sales of these products exceed  
37 ten percent of the vendor's total prior monthly sales of

1 nonprescription drugs in March through October. In November through  
2 February, the vendor may not sell any quantity of ephedrine,  
3 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
4 salts of isomers, if the total monthly sales of these products exceed  
5 twenty percent of the vendor's total prior monthly sales of  
6 nonprescription drugs. For purposes of this section, "monthly sales"  
7 means total dollars paid by buyers. The board may suspend or revoke  
8 the registration of an itinerant vendor who violates this subsection.

9 (b) The itinerant vendor shall maintain inventory records of the  
10 receipt and disposition of nonprescription drugs, utilizing existing  
11 inventory controls if an auditor or investigator can determine  
12 compliance with (a) of this subsection, and otherwise in the form and  
13 manner required by the board. The records must be available for  
14 inspection by the board or any law enforcement agency and must be  
15 maintained for two years. The board may suspend or revoke the  
16 registration of an itinerant vendor who violates this subsection. For  
17 purposes of this subsection, "disposition" means the return of product  
18 to the wholesaler or distributor.

19 **Sec. 5.** RCW 69.43.110 and 2001 c 96 s 9 are each amended to read  
20 as follows:

21 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or  
22 itinerant vendor registered with, the department of health under  
23 chapter 18.64 RCW, or an employee thereof, or a practitioner as defined  
24 in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish,  
25 in a single transaction:

26 (a) More than three packages of one or more products that he or she  
27 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine,  
28 their salts, isomers, or salts of isomers; or

29 (b) A single package of any product that he or she knows to contain  
30 more than three grams of ephedrine, pseudoephedrine, or  
31 phenylpropanolamine, their salts, isomers, or salts of isomers, or a  
32 combination of any of these substances.

33 (2) It is unlawful for a person who is not a manufacturer,  
34 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor  
35 licensed by or registered with the department of health under chapter  
36 18.64 RCW to purchase or acquire, in any twenty-four hour period, more

1 than the quantities of the substances specified in subsection (1) of  
2 this section.

3 (3) It is unlawful for any person to sell or distribute any of the  
4 substances specified in subsection (1) of this section unless the  
5 person is licensed by or registered with the department of health under  
6 chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

7 (4) A violation of this section is a gross misdemeanor.

8 **Sec. 6.** RCW 69.43.035 and 2001 c 96 s 4 are each amended to read  
9 as follows:

10 (1) Any manufacturer or wholesaler who sells, transfers, or  
11 otherwise furnishes any substance specified in RCW 69.43.010(1) to any  
12 person in a suspicious transaction shall report the transaction in  
13 writing to the state board of pharmacy.

14 (2) Any person specified in subsection (1) of this section who does  
15 not submit a report as required by subsection (1) of this section is  
16 guilty of a gross misdemeanor.

17 (3) For the purposes of this section, "suspicious transaction"  
18 means a sale or transfer to which any of the following applies:

19 (a) The circumstances of the sale or transfer would lead a  
20 reasonable person to believe that the substance is likely to be used  
21 for the purpose of unlawfully manufacturing a controlled substance  
22 under chapter 69.50 RCW, based on such factors as the amount involved,  
23 the method of payment, the method of delivery, and any past dealings  
24 with any participant in the transaction. The state board of pharmacy  
25 shall adopt by rule criteria for determining whether a transaction is  
26 suspicious, taking into consideration the recommendations in appendix  
27 A of the report to the United States attorney general by the suspicious  
28 orders task force under the federal comprehensive methamphetamine  
29 control act of 1996.

30 (b) The transaction involves payment for any substance specified in  
31 RCW 69.43.010(1) in cash or money orders in a total amount of more than  
32 two hundred dollars.

33 (4) The board of pharmacy shall transmit to the department of  
34 revenue a copy of each report of a suspicious transaction that it  
35 receives under this section.

1       **Sec. 7.** RCW 69.43.130 and 2001 c 96 s 11 are each amended to read  
2 as follows:

3       RCW 69.43.110 and 69.43.120 do not apply to:

4       (1) Pediatric products primarily intended for administration to  
5 children under twelve years of age, according to label instructions,  
6 either: (a) In solid dosage form whose individual dosage units do not  
7 exceed fifteen milligrams of ephedrine, pseudoephedrine, or  
8 phenylpropanolamine; or (b) in liquid form whose recommended dosage,  
9 according to label instructions, does not exceed fifteen milligrams of  
10 ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters  
11 of liquid product;

12       (2) Pediatric liquid products primarily intended for administration  
13 to children under two years of age for which the recommended dosage  
14 does not exceed two milliliters and the total package content does not  
15 exceed one fluid ounce; (~~or~~)

16       (3) Products that the state board of pharmacy, upon application of  
17 a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120  
18 because the product has been formulated in such a way as to effectively  
19 prevent the conversion of the active ingredient into methamphetamine,  
20 or its salts or precursors; or

21       (4) Products, as packaged, that the board of pharmacy, upon  
22 application of a manufacturer, exempts from RCW 69.43.110(1)(b) and  
23 69.43.120 because:

24       (a) The product meets the federal definition of an ordinary over-  
25 the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

26       (b) The product is a salt, isomer, or salts of isomers of  
27 pseudoephedrine and, as packaged, has a total weight of more than three  
28 grams but the net weight of the pseudoephedrine base is equal to or  
29 less than three grams; and

30       (c) The board of pharmacy determines that the value to the people  
31 of the state of having the product, as packaged, available for sale to  
32 consumers outweighs the danger, and the product, as packaged, has not  
33 been used in the illegal manufacture of methamphetamine.

34       NEW SECTION. **Sec. 8.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the  
36 remainder of the act or the application of the provision to other



1 persons or circumstances is not affected.

2 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2004.

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