

ESHB 2266 - CONF REPT  
By Conference Committee

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** Restricting access to certain precursor  
4 drugs used to manufacture methamphetamine to ensure that they are only  
5 sold at retail to individuals who will use them for legitimate purposes  
6 upon production of proper identification is an essential step to  
7 controlling the manufacture of methamphetamine.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.43 RCW  
9 to read as follows:

10 (1) For purposes of this section, "traditional Chinese herbal  
11 practitioner" means a person who is certified as a diplomate in Chinese  
12 herbology from the national certification commission for acupuncture  
13 and oriental medicine or who has received a certificate in Chinese  
14 herbology from a school accredited by the accreditation council on  
15 acupuncture and oriental medicine.

16 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor  
17 registered with, the department of health under chapter 18.64 RCW, or  
18 an employee thereof, a practitioner as defined in RCW 18.64.011, or a  
19 traditional Chinese herbal practitioner may not knowingly sell,  
20 transfer, or otherwise furnish to any person a product at retail that  
21 he or she knows to contain any detectable quantity of ephedrine,  
22 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
23 salts of isomers, without first obtaining photo identification of the  
24 person that shows the date of birth of the person.

25 (3) A person buying or receiving a product at retail containing any  
26 detectable quantity of ephedrine, pseudoephedrine, or  
27 phenylpropanolamine, or their salts, isomers, or salts of isomers, from  
28 a pharmacy licensed by, or shopkeeper or itinerant vendor registered  
29 with, the department of health under chapter 18.64 RCW, or an employee

1 thereof, a practitioner as defined in RCW 18.64.011, or a traditional  
2 Chinese herbal practitioner must first produce photo identification of  
3 the person that shows the date of birth of the person.

4 (4) Any product containing any detectable quantity of ephedrine,  
5 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
6 salts of isomers, shall be kept in a central location that is not  
7 accessible by customers without assistance of an employee of the  
8 merchant.

9 (5) No pharmacy licensed by, or shopkeeper or itinerant vendor  
10 registered with, the department of health under chapter 18.64 RCW, or  
11 an employee thereof, a practitioner as defined in RCW 18.64.011, or a  
12 traditional Chinese herbal practitioner may sell any product containing  
13 any detectable quantity of ephedrine, pseudoephedrine, or  
14 phenylpropanolamine, or their salts, isomers, or salts of isomers, to  
15 a person that is not at least eighteen years old.

16 (6) The board of pharmacy, by rule, may exempt products containing  
17 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,  
18 isomers, or salts of isomers, in combination with another active  
19 ingredient from the requirements of this section if they are found not  
20 to be used in the illegal manufacture of methamphetamine or other  
21 controlled dangerous substances. A manufacturer of a drug product may  
22 apply for removal of the product from the requirements of this section  
23 if the product is determined by the board to have been formulated in  
24 such a way as to effectively prevent the conversion of the active  
25 ingredient into methamphetamine. The burden of proof for exemption is  
26 upon the person requesting the exemption. The petitioner shall provide  
27 the board with evidence that the product has been formulated in such a  
28 way as to serve as an effective general deterrent to the conversion of  
29 pseudoephedrine into methamphetamine. The evidence must include the  
30 furnishing of a valid scientific study, conducted by an independent,  
31 professional laboratory and evincing professional quality chemical  
32 analysis. Factors to be considered in whether a product should be  
33 excluded from this section include but are not limited to:

34 (a) Ease with which the product can be converted to  
35 methamphetamine;

36 (b) Ease with which ephedrine, pseudoephedrine, or  
37 phenylpropanolamine is extracted from the substance and whether it  
38 forms an emulsion, salt, or other form;

1 (c) Whether the product contains a "molecular lock" that renders it  
2 incapable of being converted into methamphetamine;

3 (d) Presence of other ingredients that render the product less  
4 likely to be used in the manufacture of methamphetamine; and

5 (e) Any pertinent data that can be used to determine the risk of  
6 the substance being used in the illegal manufacture of methamphetamine  
7 or any other controlled substance.

8 (7) Nothing in this section applies:

9 (a) To any product containing ephedrine, pseudoephedrine, or  
10 phenylpropanolamine, or their salts, isomers, or salts of isomers that  
11 is not the only active ingredient and that is in liquid, liquid  
12 capsule, or gel capsule form;

13 (b) To the sale of a product that may only be sold upon the  
14 presentation of a prescription;

15 (c) To the sale of a product by a traditional Chinese herbal  
16 practitioner to a patient; or

17 (d) When the details of the transaction are recorded in a pharmacy  
18 profile individually identified with the recipient and maintained by a  
19 licensed pharmacy.

20 (8)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor  
21 registered with, the department of health under chapter 18.64 RCW, a  
22 practitioner as defined in RCW 18.64.011, or a traditional Chinese  
23 herbal practitioner may retaliate against any employee that has made a  
24 good faith attempt to comply with the requirements of this section by  
25 requesting that a customer present photo identification, making a  
26 reasonable effort to determine the customer's age.

27 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor  
28 registered with, the department of health under chapter 18.64 RCW, a  
29 practitioner as defined in RCW 18.64.011, or a traditional Chinese  
30 herbal practitioner is subject to prosecution under subsection (9) of  
31 this section if they made a good faith attempt to comply with the  
32 requirements of this section by requesting that a customer present  
33 photo identification, making a reasonable effort to determine the  
34 customer's age.

35 (9) A violation of this section is a gross misdemeanor.

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.43 RCW  
37 to read as follows:

1 (1) The Washington association of sheriffs and police chiefs or the  
2 Washington state patrol may petition the state board of pharmacy to  
3 apply the log requirements in section 8 of this act to one or more  
4 products that contain ephedrine, pseudoephedrine, or  
5 phenylpropanolamine, or their salts, isomers, or salts of isomers, that  
6 is not the only active ingredient and that is in liquid, liquid  
7 capsule, or gel capsule form. The petition shall establish that:

8 (a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be  
9 effectively extracted from the product and converted into  
10 methamphetamine or another controlled dangerous substance; and

11 (b) Law enforcement, the Washington state patrol, or the department  
12 of ecology are finding substantial evidence that the product is being  
13 used for the illegal manufacture of methamphetamine or another  
14 controlled dangerous substance.

15 (2) The board of pharmacy shall adopt rules when a petition  
16 establishes that requiring the application of the log requirements in  
17 section 8 of this act to the sale of the product at retail is warranted  
18 based upon the effectiveness and extent of use of the product for the  
19 illegal manufacture of methamphetamine or other controlled dangerous  
20 substances and the extent of the burden of any restrictions upon  
21 consumers. The board of pharmacy may adopt emergency rules to apply  
22 the log requirements to the sale of a product when the petition  
23 establishes that the immediate restriction of the product is necessary  
24 in order to protect public health and safety.

25 **Sec. 4.** RCW 69.43.110 and 2004 c 52 s 5 are each amended to read  
26 as follows:

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

32 (a) More than (~~three~~) two packages of one or more products that  
33 he or she knows to contain ephedrine, pseudoephedrine, or  
34 phenylpropanolamine, their salts, isomers, or salts of isomers; or

35 (b) A single package of any product that he or she knows to contain  
36 more than three grams of ephedrine, pseudoephedrine, or

1 phenylpropanolamine, their salts, isomers, or salts of isomers, or a  
2 combination of any of these substances.

3 (2) It is unlawful for a person who is not a manufacturer,  
4 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor  
5 licensed by or registered with the department of health under chapter  
6 18.64 RCW to purchase or acquire, in any twenty-four hour period, more  
7 than the quantities of the substances specified in subsection (1) of  
8 this section.

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

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

14 **Sec. 5.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to read  
15 as follows:

16 (1) A shopkeeper registered as provided in this section may sell  
17 nonprescription drugs, if such drugs are sold in the original package  
18 of the manufacturer.

19 (2) Every shopkeeper not a licensed pharmacist, desiring to secure  
20 the benefits and privileges of this section, is hereby required to  
21 register as a shopkeeper through the master license system, and he or  
22 she shall pay the fee determined by the secretary for registration, and  
23 on a date to be determined by the secretary thereafter the fee  
24 determined by the secretary for renewal of the registration; and shall  
25 at all times keep said registration or the current renewal thereof  
26 conspicuously exposed in the location to which it applies. In event  
27 such shopkeeper's registration is not renewed by the master license  
28 expiration date, no renewal or new registration shall be issued except  
29 upon payment of the registration renewal fee and the master license  
30 delinquency fee under chapter 19.02 RCW. This registration fee shall  
31 not authorize the sale of legend drugs or controlled substances.

32 (3) The registration fees determined by the secretary under  
33 subsection (2) of this section shall not exceed the cost of registering  
34 the shopkeeper.

35 (4) Any shopkeeper who shall vend or sell, or offer to sell to the  
36 public any such nonprescription drug or preparation without having

1 registered to do so as provided in this section, shall be guilty of a  
2 misdemeanor and each sale or offer to sell shall constitute a separate  
3 offense.

4 (5) A shopkeeper who is not a licensed pharmacy may purchase  
5 products containing any detectable quantity of ephedrine,  
6 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
7 salts of isomers, only from a wholesaler licensed by the department  
8 under RCW 18.64.046 or from a manufacturer licensed by the department  
9 under RCW 18.64.045. The board shall issue a warning to a shopkeeper  
10 who violates this subsection, and may suspend or revoke the  
11 registration of the shopkeeper for a subsequent violation.

12 (6) A shopkeeper who has purchased products containing any  
13 detectable quantity of ephedrine, pseudoephedrine, or  
14 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
15 a suspicious transaction as defined in RCW 69.43.035, is subject to the  
16 following requirements:

17 (a) The shopkeeper may not sell any quantity of ephedrine,  
18 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
19 salts of isomers, if the total monthly sales of these products exceed  
20 ten percent of the shopkeeper's total prior monthly sales of  
21 nonprescription drugs in March through October. In November through  
22 February, the shopkeeper may not sell any quantity of ephedrine,  
23 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
24 salts of isomers, if the total monthly sales of these products exceed  
25 twenty percent of the shopkeeper's total prior monthly sales of  
26 nonprescription drugs. For purposes of this section, "monthly sales"  
27 means total dollars paid by buyers. The board may suspend or revoke  
28 the registration of a shopkeeper who violates this subsection.

29 (b) The shopkeeper shall maintain inventory records of the receipt  
30 and disposition of nonprescription drugs, utilizing existing inventory  
31 controls if an auditor or investigator can determine compliance with  
32 (a) of this subsection, and otherwise in the form and manner required  
33 by the board. The records must be available for inspection by the  
34 board or any law enforcement agency and must be maintained for two  
35 years. The board may suspend or revoke the registration of a  
36 shopkeeper who violates this subsection. For purposes of this  
37 subsection, "disposition" means the return of product to the wholesaler  
38 or distributor.

1       **Sec. 6.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to read  
2 as follows:

3       (1) The owner of each place of business which sells legend drugs  
4 and nonprescription drugs, or nonprescription drugs at wholesale shall  
5 pay a license fee to be determined by the secretary, and thereafter, on  
6 or before a date to be determined by the secretary as provided in RCW  
7 43.70.250 and 43.70.280, a like fee to be determined by the secretary,  
8 for which the owner shall receive a license of location from the  
9 department, which shall entitle such owner to either sell legend drugs  
10 and nonprescription drugs or nonprescription drugs at wholesale at the  
11 location specified for the period ending on a date to be determined by  
12 the secretary, and each such owner shall at the time of payment of such  
13 fee file with the department, on a blank therefor provided, a  
14 declaration of ownership and location, which declaration of ownership  
15 and location so filed as aforesaid shall be deemed presumptive evidence  
16 of the ownership of such place of business mentioned therein. It shall  
17 be the duty of the owner to notify immediately the department of any  
18 change of location and ownership and to keep the license of location or  
19 the renewal thereof properly exhibited in such place of business.

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

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

26       (4) No wholesaler may sell any quantity of drug products containing  
27 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,  
28 isomers, or salts of isomers, if the total monthly sales of these  
29 products to persons within the state of Washington exceed five percent  
30 of the wholesaler's total prior monthly sales of nonprescription drugs  
31 to persons within the state in March through October. In November  
32 through February, no wholesaler may sell any quantity of drug products  
33 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their  
34 salts, isomers, or salts of isomers if the total monthly sales of these  
35 products to persons within the state of Washington exceed ten percent  
36 of the wholesaler's total prior monthly sales of nonprescription drugs  
37 to persons within the state. For purposes of this section, monthly

1 sales means total dollars paid by buyers. The board may suspend or  
2 revoke the license of any wholesaler that violates this section.

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

10 (6) The requirements for a license apply to all persons, in  
11 Washington and outside of Washington, who sell both legend drugs and  
12 nonprescription drugs and to those who sell only nonprescription drugs,  
13 at wholesale to pharmacies, practitioners, and shopkeepers in  
14 Washington.

15 (7)(a) No wholesaler may sell any (~~quantity~~) product containing  
16 any detectable quantity of ephedrine, pseudoephedrine,  
17 phenylpropanolamine, or their salts, isomers, or salts of isomers, to  
18 any person in Washington other than a pharmacy licensed under this  
19 chapter, a shopkeeper or itinerant vendor registered under this  
20 chapter, (~~or~~) a practitioner as defined in RCW 18.64.011, or a  
21 traditional Chinese herbal practitioner as defined in section 2 of this  
22 act.

23 (b) A violation of this subsection is punishable as a class C  
24 felony according to chapter 9A.20 RCW, and each sale in violation of  
25 this subsection constitutes a separate offense.

26 **Sec. 7.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to read  
27 as follows:

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

34 (2) Any itinerant vendor or peddler who shall vend or sell, or  
35 offer to sell to the public any such nonprescription drug or  
36 preparation without having registered to do so as provided in this



1 section, is guilty of a misdemeanor and each sale or offer to sell  
2 shall constitute a separate offense.

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

9 (4) An itinerant vendor may purchase products containing any  
10 detectable quantity of ephedrine, pseudoephedrine, or  
11 phenylpropanolamine, or their salts, isomers, or salts of isomers only  
12 from a wholesaler licensed by the department under RCW 18.64.046 or  
13 from a manufacturer licensed by the department under RCW 18.64.045.  
14 The board shall issue a warning to an itinerant vendor who violates  
15 this subsection, and may suspend or revoke the registration of the  
16 vendor for a subsequent violation.

17 (5) An itinerant vendor who has purchased products containing any  
18 detectable quantity of ephedrine, pseudoephedrine, or  
19 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
20 a suspicious transaction as defined in RCW 69.43.035, is subject to the  
21 following requirements:

22 (a) The itinerant vendor may not sell any quantity of ephedrine,  
23 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
24 salts of isomers, if the total monthly sales of these products exceed  
25 ten percent of the vendor's total prior monthly sales of  
26 nonprescription drugs in March through October. In November through  
27 February, the vendor may not sell any quantity of ephedrine,  
28 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
29 salts of isomers, if the total monthly sales of these products exceed  
30 twenty percent of the vendor's total prior monthly sales of  
31 nonprescription drugs. For purposes of this section, "monthly sales"  
32 means total dollars paid by buyers. The board may suspend or revoke  
33 the registration of an itinerant vendor who violates this subsection.

34 (b) The itinerant vendor shall maintain inventory records of the  
35 receipt and disposition of nonprescription drugs, utilizing existing  
36 inventory controls if an auditor or investigator can determine  
37 compliance with (a) of this subsection, and otherwise in the form and  
38 manner required by the board. The records must be available for

1 inspection by the board or any law enforcement agency and must be  
2 maintained for two years. The board may suspend or revoke the  
3 registration of an itinerant vendor who violates this subsection. For  
4 purposes of this subsection, "disposition" means the return of product  
5 to the wholesaler or distributor.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.43 RCW  
7 to read as follows:

8 (1) The state board of pharmacy, using procedures under chapter  
9 34.05 RCW, shall implement and conduct a statewide pilot project  
10 requiring the collection and maintenance of written or electronic logs  
11 or other alternative means of recording retail transactions involving  
12 ephedrine, pseudoephedrine, or phenylpropanolamine. The rules  
13 implementing the pilot project shall be in place by January 1, 2006.

14 (2) The pilot project shall be designed to address:

15 (a) Whether a log or other means of recording a transaction is an  
16 effective law enforcement tool;

17 (b) What information is needed to make logs or other means of  
18 recording a transaction useful as a deterrent to criminal activity;

19 (c) The most effective method of obtaining, recording, and storing  
20 log or other electronic data in the least intrusive manner available;

21 (d) How long the information recorded in the logs or other means of  
22 recording a transaction should be maintained; and

23 (e) How logs or other means of recording a transaction can be most  
24 effectively transmitted to law enforcement and the state board of  
25 pharmacy.

26 (3) The board shall convene a work group to evaluate the data  
27 collected during the pilot project. The work group shall consist of:

28 (a) One representative from law enforcement appointed by the  
29 Washington association of sheriffs and police chiefs;

30 (b) One representative from the Washington state patrol;

31 (c) One representative appointed by the Washington association of  
32 prosecuting attorneys;

33 (d) One representative appointed by the office of the attorney  
34 general;

35 (e) One representative appointed by the state board of pharmacy;  
36 and

37 (f) Two representatives from the retail industry.

1 (4) The state board of pharmacy shall begin data collection for the  
2 pilot project no later than January 1, 2006, and report to the  
3 legislature no later than November 1, 2007, regarding the findings of  
4 the work group along with any recommendations or proposed legislation.

5 (5) Any orders and rules adopted under this section not in conflict  
6 with state law continue in effect until modified, superseded, or  
7 repealed. The board may implement rule changes based upon the results  
8 of the pilot project and recommendations of the work group.

9 (6)(a) The records required by this section are for the  
10 confidential use of the pharmacy, shopkeeper, or itinerant vendor,  
11 except that:

12 (i) Every pharmacy, shopkeeper, or itinerant vendor shall produce  
13 the records in court whenever lawfully required to do so;

14 (ii) The records shall be open for inspection by the board of  
15 pharmacy; and

16 (iii) The records shall be open for inspection by any general or  
17 limited authority Washington peace officer to enforce the provisions of  
18 this chapter.

19 (b) A person violating this subsection is guilty of a misdemeanor.

20 NEW SECTION. **Sec. 9.** Each county sheriff shall compile and  
21 maintain a record of commercial products containing ephedrine,  
22 pseudoephedrine, or phenylpropanolamine and packaging found at  
23 methamphetamine laboratory sites. The data shall be forwarded to the  
24 Washington association of sheriffs and police chiefs and shall be  
25 reported to the legislature by November 1, 2007, and annually  
26 thereafter.

27 NEW SECTION. **Sec. 10.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 11.** (1) Section 2 of this act takes effect  
32 October 1, 2005.

33 (2) Sections 1, 3 through 7, 9, and 10 of this act take effect  
34 January 1, 2006.

1 (3) Section 8 of this act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and takes effect  
4 immediately."

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5 On page 1, line 2 of the title, after "phenylpropanolamine;" strike  
6 the remainder of the title and insert "amending RCW 69.43.110,  
7 18.64.044, 18.64.046, and 18.64.047; adding new sections to chapter  
8 69.43 RCW; creating new sections; prescribing penalties; providing  
9 effective dates; and declaring an emergency."

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