

ESHB 2266 - S COMM AMD  
By Committee on Judiciary

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 location that is not accessible by  
7 customers without assistance of an employee of the merchant.

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

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

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

35 (b) Ease with which ephedrine, pseudoephedrine, or  
36 phenylpropanolamine is extracted from the substance and whether it  
37 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 the sale of a product that may only be sold upon the  
10 presentation of a prescription;

11 (b) To the sale of a product by a traditional Chinese herbal  
12 practitioner to a patient; or

13 (c) When the details of the transaction are recorded in a pharmacy  
14 profile individually identified with the recipient and maintained by a  
15 licensed pharmacy.

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

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

33 (9) A violation of subsection (2) of this section by any employee  
34 of a pharmacy, shopkeeper, itinerant vendor, practitioner, or  
35 traditional Chinese herbal practitioner is a class 3 civil infraction.

36 (10) Any violation of this section by a pharmacy, shopkeeper,  
37 itinerant vendor, practitioner, or traditional Chinese herbal  
38 practitioner is a gross misdemeanor.

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

3        (1) A pharmacy licensed by, or a shopkeeper or itinerant vendor  
4 registered with, the department of health under chapter 18.64 RCW, or  
5 an employee thereof, a practitioner as defined in RCW 18.64.011, or a  
6 traditional Chinese herbal practitioner shall not knowingly sell,  
7 transfer, or otherwise furnish to any person a product that he or she  
8 knows to contain any detectable quantity of ephedrine, pseudoephedrine,  
9 or phenylpropanolamine, or their salts, isomers, or salts of isomers  
10 without documenting the transaction using one of the following:

11        (a) Have the person sign a written or electronic log or receipt  
12 showing the date of the transaction, the name of the person, and the  
13 amount of the product being sold, transferred, or otherwise furnished;  
14 or

15        (b) Make a record of the transaction with video tape or any other  
16 medium used to electronically record images.

17        (2) Written and electronic logs or receipts obtained under  
18 subsection (1)(a) of this section shall be maintained for a period of  
19 two years from the date of the transaction.

20        (3) Video tape and electronic images obtained under subsection  
21 (1)(b) of this section shall be maintained for a minimum of thirty days  
22 from the date of the transaction.

23        (4) A violation of subsection (1) of this section by any employee  
24 of a pharmacy, shopkeeper, itinerant vendor, practitioner, or  
25 traditional Chinese herbal practitioner is guilty of a class 3 civil  
26 infraction.

27        (5) A violation of this section by a pharmacy, shopkeeper,  
28 itinerant vendor, practitioner, or traditional Chinese herbal  
29 practitioner is a gross misdemeanor.

30        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 69.43 RCW  
31 to read as follows:

32        (1) The records required by section 3 of this act are for the  
33 confidential use of the pharmacy, shopkeeper, or itinerant vendor,  
34 except that:

35        (a) Every pharmacy, shopkeeper, or itinerant vendor shall produce  
36 the records in court whenever lawfully required to do so;

1 (b) The records shall be open for inspection by the board of  
2 pharmacy; and

3 (c) The records shall be open for inspection by any general or  
4 limited authority Washington peace officer to enforce the provisions of  
5 this chapter.

6 (2) A person violating this section is guilty of a misdemeanor.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 69.43 RCW  
8 to read as follows:

9 (1) At least quarterly, every pharmacy licensed by, or shopkeeper,  
10 or itinerant vendor registered with the department of health under  
11 chapter 18.64 RCW, a practitioner as defined in RCW 18.64.011, or  
12 traditional Chinese herbal practitioner, shall transmit all logs  
13 required by section 3 of this act to the local general authority  
14 Washington law enforcement agency with jurisdiction.

15 (2) The local law enforcement agency shall forward all of the logs  
16 to the Washington state patrol. It shall be the duty of the Washington  
17 state patrol to enter all log entries into a statewide data base of  
18 purchasers of ephedrine, pseudoephedrine, or phenylpropanolamine.

19 (3) Any law enforcement agency may request a search of the data  
20 base to enforce the provisions of this chapter.

21 **Sec. 6.** RCW 69.43.110 and 2004 c 52 s 5 are each amended to read  
22 as follows:

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

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

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

35 (2) It is unlawful for a person who is not a manufacturer,  
36 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor

1 licensed by or registered with the department of health under chapter  
2 18.64 RCW to purchase or acquire, in any twenty-four hour period, more  
3 than the quantities of the substances specified in subsection (1) of  
4 this section.

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

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

10 **Sec. 7.** RCW 69.43.120 and 2001 c 96 s 10 are each amended to read  
11 as follows:

12 (1) Any person who possesses more than (~~fifteen~~) ten grams of  
13 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts,  
14 isomers, or salts of isomers, or a combination of any of those  
15 substances, is guilty of a gross misdemeanor.

16 (2) This section does not apply to any of the following:

17 (a) A pharmacist or other authorized person who sells or furnishes  
18 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts,  
19 isomers, or salts of isomers upon the prescription of a practitioner,  
20 as defined in RCW 69.41.010;

21 (b) A practitioner who administers or furnishes ephedrine,  
22 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts  
23 of isomers to his or her patients;

24 (c) A pharmacy, manufacturer, or wholesaler licensed by, or  
25 shopkeeper or itinerant vendor registered with, the department of  
26 health under chapter 18.64 RCW;

27 (d) A person in the course of his or her business of selling,  
28 transporting, or storing ephedrine, pseudoephedrine, or  
29 phenylpropanolamine, their salts, isomers, or salts of isomers, for a  
30 person described in (a), (b), or (c) of this subsection; or

31 (e) A person in possession of more than (~~fifteen~~) ten grams of  
32 ephedrine, pseudoephedrine, or phenylpropanolamine, their salts,  
33 isomers, or salts of isomers in their home or residence under  
34 circumstances consistent with typical medicinal or household use as  
35 indicated by, but not limited to, storage location and possession of  
36 products in a variety of strengths, brands, types, purposes, and  
37 expiration dates.

1       **Sec. 8.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to read  
2 as follows:

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

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

19       (3) The registration fees determined by the secretary under  
20 subsection (2) of this section shall not exceed the cost of registering  
21 the shopkeeper.

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

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

35       (6) A shopkeeper who has purchased products containing any  
36 detectable quantity of ephedrine, pseudoephedrine, or  
37 phenylpropanolamine, or their salts, isomers, or salts of isomers, in

1 a suspicious transaction as defined in RCW 69.43.035, is subject to the  
2 following requirements:

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

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

25 **Sec. 9.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to read  
26 as follows:

27 (1) The owner of each place of business which sells legend drugs  
28 and nonprescription drugs, or nonprescription drugs at wholesale shall  
29 pay a license fee to be determined by the secretary, and thereafter, on  
30 or before a date to be determined by the secretary as provided in RCW  
31 43.70.250 and 43.70.280, a like fee to be determined by the secretary,  
32 for which the owner shall receive a license of location from the  
33 department, which shall entitle such owner to either sell legend drugs  
34 and nonprescription drugs or nonprescription drugs at wholesale at the  
35 location specified for the period ending on a date to be determined by  
36 the secretary, and each such owner shall at the time of payment of such  
37 fee file with the department, on a blank therefor provided, a



1 declaration of ownership and location, which declaration of ownership  
2 and location so filed as aforesaid shall be deemed presumptive evidence  
3 of the ownership of such place of business mentioned therein. It shall  
4 be the duty of the owner to notify immediately the department of any  
5 change of location and ownership and to keep the license of location or  
6 the renewal thereof properly exhibited in such place of business.

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

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

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

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

34 (6) The requirements for a license apply to all persons, in  
35 Washington and outside of Washington, who sell both legend drugs and  
36 nonprescription drugs and to those who sell only nonprescription drugs,  
37 at wholesale to pharmacies, practitioners, and shopkeepers in  
38 Washington.

1 (7)(a) No wholesaler may sell any (~~quantity~~) product containing  
2 any detectable quantity of ephedrine, pseudoephedrine,  
3 phenylpropanolamine, or their salts, isomers, or salts of isomers, to  
4 any person in Washington other than a pharmacy licensed under this  
5 chapter, a shopkeeper or itinerant vendor registered under this  
6 chapter, (~~or~~) a practitioner as defined in RCW 18.64.011, or a  
7 traditional Chinese herbal practitioner as defined in section 2 of this  
8 act.

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

12 **Sec. 10.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to read  
13 as follows:

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

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

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

31 (4) An itinerant vendor may purchase products containing any  
32 detectable quantity of ephedrine, pseudoephedrine, or  
33 phenylpropanolamine, or their salts, isomers, or salts of isomers only  
34 from a wholesaler licensed by the department under RCW 18.64.046 or  
35 from a manufacturer licensed by the department under RCW 18.64.045.  
36 The board shall issue a warning to an itinerant vendor who violates

1 this subsection, and may suspend or revoke the registration of the  
2 vendor for a subsequent violation.

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

8 (a) The itinerant vendor may not sell any quantity of ephedrine,  
9 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
10 salts of isomers, if the total monthly sales of these products exceed  
11 ten percent of the vendor's total prior monthly sales of  
12 nonprescription drugs in March through October. In November through  
13 February, the vendor may not sell any quantity of ephedrine,  
14 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
15 salts of isomers, if the total monthly sales of these products exceed  
16 twenty percent of the vendor's total prior monthly sales of  
17 nonprescription drugs. For purposes of this section, "monthly sales"  
18 means total dollars paid by buyers. The board may suspend or revoke  
19 the registration of an itinerant vendor who violates this subsection.

20 (b) The itinerant vendor shall maintain inventory records of the  
21 receipt and disposition of nonprescription drugs, utilizing existing  
22 inventory controls if an auditor or investigator can determine  
23 compliance with (a) of this subsection, and otherwise in the form and  
24 manner required by the board. The records must be available for  
25 inspection by the board or any law enforcement agency and must be  
26 maintained for two years. The board may suspend or revoke the  
27 registration of an itinerant vendor who violates this subsection. For  
28 purposes of this subsection, "disposition" means the return of product  
29 to the wholesaler or distributor.

30 NEW SECTION. Sec. 11. The Washington association of sheriffs and  
31 police chiefs shall report to the legislature by December 1, 2006,  
32 regarding the frequency of use and effectiveness of the logs and video  
33 or electronic records required under section 3 of this act in the  
34 investigation and prosecution of controlled substances offenses.

35 NEW SECTION. Sec. 12. If any provision of this act or its

1 application to any person or circumstance is held invalid, the  
2 remainder of the act or the application of the provision to other  
3 persons or circumstances is not affected.

4 NEW SECTION. **Sec. 13.** This act takes effect January 1, 2006."

**ESHB 2266** - S COMM AMD  
By Committee on Judiciary

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 69.43.120, 18.64.044, 18.64.046, and 18.64.047; adding new sections to  
8 chapter 69.43 RCW; creating new sections; prescribing penalties; and  
9 providing an effective date."

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