

# HOUSE BILL REPORT

## ESHB 2266

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### As Passed Legislature

**Title:** An act relating to the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

**Brief Description:** Concerning access to certain precursor drugs.

**Sponsors:** By House Committee on Health Care (originally sponsored by Representatives Campbell, Morrell, Green, Moeller, Lantz, Cody, McCune, Haler, Lovick, McDonald and Ahern).

### Brief History:

#### Committee Activity:

Health Care: 3/1/05 [DPS];  
Appropriations: 3/5/05 [DPS(HC)].

#### Floor Activity:

Passed House: 3/14/05, 79-17.  
Senate Amended.  
Passed Senate: 4/13/05, 45-1.  
House Refused to Concur.  
Conference Committee.  
Passed House: 4/23/05, 91-5.  
Passed Senate: 4/23/05, 47-0.  
Passed Legislature.

### Brief Summary of Engrossed Substitute Bill

- Establishes age, identification, log, and accessibility restrictions on products that contain ephedrine, pseudoephedrine, or phenylpropanolamine.
- Reduces the number of packages of products containing ephedrine, pseudoephedrine, or phenylpropanolamine that may be sold in a transaction or purchased in a 24 hour period from three to two.
- Creates a work group to review data from transaction logs and the effectiveness of maintaining logs.

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### HOUSE COMMITTEE ON HEALTH CARE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Campbell, Vice Chair; Morrell, Vice Chair; Appleton, Clibborn, Green, Lantz, Moeller and Schual-Berke.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Bailey, Ranking Minority Member; Curtis, Assistant Ranking Minority Member; Alexander, Condotta, Hinkle and Skinner.

**Staff:** Chris Blake (786-7392).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Health Care be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Sommers, Chair; Fromhold, Vice Chair; McDonald, Assistant Ranking Minority Member; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Priest and Schual-Berke.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Clements, Hinkle, Pearson, Talcott and Walsh.

**Staff:** Amy Hanson (786-7118).

### **Background:**

Precursor drugs are substances that can be used to manufacture controlled substances. Ephedrine, pseudoephedrine, or phenylpropanolamine are common precursor items that are often used to illegally manufacture methamphetamine. Methamphetamine is a highly addictive substance that affects the central nervous system.

In Washington, only pharmacies, authorized health care practitioners, and registered shopkeepers and itinerant vendors may sell products containing ephedrine, pseudoephedrine, or phenylpropanolamine to consumers. They may not sell more than three packages of these products in a single transaction or a single product containing more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

Manufacturers and wholesalers that sell a precursor substance in a suspicious transaction must report the transaction to the Board of Pharmacy. Shopkeepers and itinerant vendors who purchase ephedrine, pseudoephedrine, or phenylpropanolamine in a suspicious transaction must maintain inventory records of their nonprescription drugs and are limited in the amount of ephedrine, pseudoephedrine, or phenylpropanolamine that they may sell in proportion to their nonprescription drug sales.

### **Summary of Engrossed Substitute Bill:**

Products that contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine may only be sold to customers who are at least eighteen years old, upon

presentation of photographic identification. Merchants must keep the products in a central location that is inaccessible to customers without assistance. The Board of Pharmacy (Board) may exempt products that contain ephedrine, pseudoephedrine, or phenylpropanolamine in combination with another active ingredient if it determines that the product has been manufactured in such a way that it cannot be used to illegally manufacture methamphetamine.

A statewide pilot project shall be conducted to require that merchants record transactions involving products that contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine through written or electronic logs or other means. The Board must develop a work group to evaluate the data received by the pilot project to determine the effectiveness of logs in preventing the illegal manufacture of methamphetamine. The work group shall consist of representatives of law enforcement, the Washington State Patrol, the prosecuting attorneys, the Attorney General's Office, the Board, and the retail industry. The work group shall present its findings and recommendations to the Legislature by November 1, 2007.

Products that contain ephedrine, pseudoephedrine, or phenylpropanolamine in combination with another active ingredient in a liquid, liquid capsule, or gel capsule form are exempt from the age, identification, accessibility, and log requirements unless the Board determines that they should be regulated pursuant to a petition from the Washington State Patrol or Washington Association of Sheriffs and Police Chiefs. The petition must establish that the product can be effectively converted into methamphetamine and that law enforcement or the Department of Ecology find that there is substantial evidence of its use for the illegal manufacture of methamphetamine.

The Board of Pharmacy, law enforcement authorities, and the courts may access the logs for regulatory activities. It is a gross misdemeanor to violate the identification or access requirements. It is a defense to a violation of these requirements that the entity or its employees made a good faith attempt to comply by requesting that the customer provide identification and a reasonable effort to determine the customer's age. An employer may not retaliate against an employee who made a good faith attempt to comply by requesting that the customer provide identification and a reasonable effort to determine the customer's age.

The limitations on the number of packages of products containing ephedrine, pseudoephedrine, or phenylpropanolamine that may be sold in a single transaction or that may be purchased in a 24 hour period are reduced from three to two.

Effective Date:

**Appropriation:** None.

**Fiscal Note:** Available on original bill.

**Effective Date:** Section 2 relating to identification, age, and accessibility requirements takes effect on October 1, 2005. Sections 1, 3 through 7, 9, and 10 relating to the regulation of products containing ephedrine, pseudoephedrine, or phenylpropanolamine take effect January 1, 2006. Section 8 relating to maintaining logs of transactions takes effect immediately.

**Testimony For:** (Health Care) (Testimony on related bills HB 1017 and HB 1018)

Methamphetamine is highly addictive and probably the hardest drug to overcome and prevention is the key to keeping people away from it. Pharmacies have said that it will not be a great burden to have people sign a log. When Oklahoma put this into effect, the number of methamphetamine laboratories decreased by 80 percent. Reducing addiction to methamphetamine will save Washington money. Buildings where methamphetamine is produced must be shut down and decontaminated and the rural counties where this frequently occurs do not have the resources to deal with this problem. If Washington does not take actions similar to Oregon and Idaho, methamphetamine producers will come to this state.

(With concerns on similar bills HB 1017 and HB 1018) There must be a more cooperative way to work on the issue with all of the affected parties. Pharmacy staff are an expensive resource for pharmacies. The potential for making mistakes increases as more demands are placed upon pharmacy staff. This bill is preliminary since the rule-making on the suspicious transactions regulations has not yet been adopted. Retailers have been working with law enforcement for a long time on these issues. Restricting access will be very expensive for the stores. Photo identification requirements are not practical for mail order pharmacies. There should be an exemption to the log requirement for organizations that have pharmacy patient profile.

**Testimony For:** (Appropriations) This bill is a tried and true formula for reducing the methamphetamine epidemic in our state. We have created a framework to reduce the channel to access the most important ingredient in the manufacture of methamphetamine. There is some inconvenience as you have to show identification to get these products, there has to be a log to track people who abuse it, and single ingredient products are put as Schedule V controlled substances. Millions of dollars are coming out of local and state government budgets for problems related to methamphetamine. Methamphetamine has a huge impact on children. People have lost their homes, property, and savings because of contamination problems related to methamphetamine.

**Testimony Against:** (Health Care) (Testimony against similar bills HB 1017 and HB 1018) Combination products are not the preferred method for producing methamphetamine. The suspicious transactions rule needs to be adopted before additional regulation is imposed. Industry has tried to find a chemical link to block the manufacturing of methamphetamine from pseudoephedrine. There should be a penalty for retail clerks who ignore the identification requirements. There should be an exemption from the log requirement for single dose transactions. The bill could be modified so that the identification and log requirements only apply to stores that have violated the suspicious transactions rules. This may result in drug users moving from methamphetamine abuse to other drugs. The log requirements will only impact the privacy rights of lawful users of these products.

**Testimony Against:** (Appropriations) None of us are in disagreement that methamphetamine is a horrible problem. This bill goes too far as it doesn't take into account that we are dealing with a product that has wide distribution and uses and we have no real proof that this will stop the problem we are trying to solve. This bill restricts a legitimate product from people that

legitimately need it. The legislation would place a tremendous administrative burden and cost on retailers to lock up this product, check identification, and keep a written log. The bill imposes a huge inconvenience on consumers and customers. The real problem in the production of methamphetamine is the single ingredient products, not combination products. Combination products, in tablet forms, should be treated in the same way as gels and liquids are treated in the legislation. The Schedule V component of the substitute bill may have a fiscal impact on DSHS through the Medical Assistance Administration. By putting single entity products behind the counter, it will create a situation where in order to have these products reimbursed; people without financial resources will feel compelled to visit a physician or nurse practitioner to get a prescription for this product, whereas now they pay cash.

**Persons Testifying:** (Health Care) (In support of related bills HB 1017 and HB 1018) Representative Campbell, prime sponsor; Representative McCune; Representative Ahern; Mitch Kranson, Snohomish County Youth Meth Action Team; Barbara Dolan, Community Action Team; Sheriff Mike Whelan, Grays Harbor; Sheriff Steve Whybark, Mason County; Chief Larry Saunders, Pierce County Police Chief's Association; and Mark Lindquist, Pierce County Deputy Prosecutor.

(With concerns on related bills HB 1017 and HB 1018) Lis Houchen, National Association of Chain Drug Stores; Stuart Halsan, Rite-Aid; Holly Chisa, Albertson's and Safeway; Jennifer Shaw, American Civil Liberties Union of Washington; Joe Daniels, Union of Food and Commercial Workers, Washington State Council; Charlie Brown, Medco Health Solutions; and Ken Bertrand, Group Health Cooperative.

(Opposed to related bills HB 1017 and HB 1018) Susie Tracy, Schering-Plough; T.K. Bentler, Washington Association of Neighborhood Stores; Jennifer Shaw, American Civil Liberties Union of Washington; and Bill Struyk, Johnson and Johnson.

**Persons Testifying:** (Appropriations) (In support) Representative Campbell, prime sponsor; Kelly Mainard, Community Action Team; and Barbara Dolan, Community Action Team.

(Opposed) Susie Tracy, Schering Plough Pharmaceutical; Mark Johnson, Washington Retail Association; Lis Houchen, National Association of Chain Drug Stores; and Bob Gee, Washington Food Industry.

**Persons Signed In To Testify But Not Testifying:** (Health Care) None.

**Persons Signed In To Testify But Not Testifying:** (Appropriations) None.