

# HOUSE BILL REPORT

## ESHB 2266

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### As Amended by the Senate

**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.

### Brief Summary of Engrossed Substitute Bill

- Requires that products containing ephedrine, pseudoephedrine, or phenylpropanolamine as the only active ingredient be sold only by pharmacists, authorized health care practitioners, or their employees.
- Establishes age, identification, written log, and accessibility restrictions on products that contain ephedrine, pseudoephedrine, or phenylpropanolamine.

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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:**

Pharmacies, authorized health care practitioners, Chinese herbal practitioners, and registered shopkeepers and itinerant vendors must obtain photo identification from customers prior to selling, transferring, or furnishing them with retail products containing any quantity ephedrine, pseudoephedrine, or phenylpropanolamine. In addition, customers must be over 18 years old to purchase those products and also must sign a log with their name, the date of the sale, and the amount of the product being sold. These products must be kept in a location that is not accessible to customers without the assistance of an employee. Products that contain ephedrine, pseudoephedrine, or phenylpropanolamine as the only active ingredient may only be sold by pharmacists, health care practitioners, or their employees.

There are exemptions to the identification, written log, age, and access requirements for products that contain ephedrine, pseudoephedrine, or phenylpropanolamine in combination

with another active ingredient and that are in liquid, liquid capsule, or gel capsule form. The Board of Pharmacy may exempt products containing ephedrine, pseudoephedrine, or phenylpropanolamine in combination with another active ingredient that have been determined to be formulated in such a way that prevents conversion into methamphetamine or other dangerous controlled substances. The identification, written log, age, and access requirements do not apply to products that may only be sold upon prescription or to pharmacy profiles maintained by pharmacies.

The Board of Pharmacy and the Department of Health may access the written logs for regulatory activities. It is a gross misdemeanor to violate the identification, written log, 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 document the transaction in the written log. An employer may not retaliate against an employee who made a good faith attempt to comply by requesting that the customer provide identification and document the transaction in the written log.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment expands the entities that may sell products that contain ephedrine, pseudoephedrine, or phenylpropanolamine as their only active ingredient from only pharmacists and their employees and authorized practitioners and their employees to also include shopkeepers and itinerant vendors. Requirements that these entities have their customers document these transactions in a written log are removed.

The Senate amendment removes photo identification, age, written log, and accessibility requirements for the sale of products that contain ephedrine, pseudoephedrine, or phenylpropanolamine in combination with another active ingredient. The Washington Association of Sheriffs and Police Chiefs or the Washington State Patrol may petition the Board of Pharmacy to establish restrictions on the sale of any such product where there is evidence of its use for the illegal manufacture of methamphetamine or another dangerous controlled substance.

The Senate amendment directs the Board of Pharmacy to convene a work group to study the need for maintaining logs of transactions involving products that contain ephedrine, pseudoephedrine, or phenylpropanolamine and report its recommendations to the Legislature by November 30, 2005.

**Appropriation:** None.

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

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**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.