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HOUSE BILL 1017

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Campbell, Morrell, McCune, Lovick, Sells, Wallace and Ormsby

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1            AN ACT Relating to restricting the sale of pseudoephedrine to  
2 licensed pharmacists; amending RCW 69.43.110, 18.64.044, 18.64.046, and  
3 18.64.047; and adding a new section to chapter 69.43 RCW.

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

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

7            Any compound, mixture, or preparation containing any detectable  
8 quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or  
9 their salts, isomers, or salts of isomers, dispensed, sold, or  
10 distributed at retail shall be dispensed, sold, or distributed only by  
11 a licensed pharmacist or a practitioner as defined in RCW 18.64.011.  
12 A pharmacist or practitioner purchasing, receiving, or otherwise  
13 acquiring any compound, mixture, or preparation of ephedrine,  
14 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
15 salts of isomers must provide adequate identification verifying that  
16 the pharmacist is licensed by the state.

17            **Sec. 2.** RCW 69.43.110 and 2004 c 52 s 5 are each amended to read  
18 as follows:

1 (1) It is unlawful for a (~~pharmacy licensed by, or shopkeeper or~~  
2 ~~itinerant vendor registered with, the department of health~~) pharmacist  
3 licensed under chapter 18.64 RCW(~~, or an employee thereof,~~) or a  
4 practitioner as defined in RCW 18.64.011, knowingly to sell, transfer,  
5 or to otherwise furnish, in a single transaction:

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

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

13 (2) It is unlawful for a person who is not a manufacturer,  
14 wholesaler, pharmacy, or practitioner(~~, shopkeeper, or itinerant~~  
15 ~~vendor licensed by or registered with the department of health under~~  
16 ~~chapter 18.64 RCW~~) as defined by RCW 18.64.011 to purchase or acquire,  
17 in any twenty-four hour period, more than the quantities of the  
18 substances specified in subsection (1) of this section.

19 (3) It is unlawful for any person to sell or distribute any of the  
20 substances specified in subsection (1) of this section unless the  
21 person is licensed by (~~or registered with~~) the department of health  
22 under chapter 18.64 RCW, or is a practitioner as defined in RCW  
23 18.64.011.

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

25 **Sec. 3.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to read  
26 as follows:

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

30 (2) Every shopkeeper not a licensed pharmacist, desiring to secure  
31 the benefits and privileges of this section, is hereby required to  
32 register as a shopkeeper through the master license system, and he or  
33 she shall pay the fee determined by the secretary for registration, and  
34 on a date to be determined by the secretary thereafter the fee  
35 determined by the secretary for renewal of the registration; and shall  
36 at all times keep said registration or the current renewal thereof  
37 conspicuously exposed in the location to which it applies. In event

1 such shopkeeper's registration is not renewed by the master license  
2 expiration date, no renewal or new registration shall be issued except  
3 upon payment of the registration renewal fee and the master license  
4 delinquency fee under chapter 19.02 RCW. This registration fee shall  
5 not authorize the sale of legend drugs or controlled substances.

6 (3) The registration fees determined by the secretary under  
7 subsection (2) of this section shall not exceed the cost of registering  
8 the shopkeeper.

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

14 ~~((5) A shopkeeper who is not a licensed pharmacy may purchase~~  
15 ~~ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,~~  
16 ~~isomers, or salts of isomers, only from a wholesaler licensed by the~~  
17 ~~department under RCW 18.64.046 or from a manufacturer licensed by the~~  
18 ~~department under RCW 18.64.045. The board shall issue a warning to a~~  
19 ~~shopkeeper who violates this subsection, and may suspend or revoke the~~  
20 ~~registration of the shopkeeper for a subsequent violation.~~

21 ~~(6) A shopkeeper who has purchased ephedrine, pseudoephedrine, or~~  
22 ~~phenylpropanolamine, or their salts, isomers, or salts of isomers, in~~  
23 ~~a suspicious transaction as defined in RCW 69.43.035, is subject to the~~  
24 ~~following requirements:~~

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

37 ~~(b) The shopkeeper shall maintain inventory records of the receipt~~  
38 ~~and disposition of nonprescription drugs, utilizing existing inventory~~

1 ~~controls if an auditor or investigator can determine compliance with~~  
2 ~~(a) of this subsection, and otherwise in the form and manner required~~  
3 ~~by the board. The records must be available for inspection by the~~  
4 ~~board or any law enforcement agency and must be maintained for two~~  
5 ~~years. The board may suspend or revoke the registration of a~~  
6 ~~shopkeeper who violates this subsection. For purposes of this~~  
7 ~~subsection, "disposition" means the return of product to the wholesaler~~  
8 ~~or distributor.))~~

9       **Sec. 4.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to read  
10 as follows:

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

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

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

34       (4) No wholesaler may sell any quantity of drug products containing  
35 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,  
36 isomers, or salts of isomers, if the total monthly sales of these  
37 products to persons within the state of Washington exceed five percent

1 of the wholesaler's total prior monthly sales of nonprescription drugs  
2 to persons within the state in March through October. In November  
3 through February, no wholesaler may sell any quantity of drug products  
4 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their  
5 salts, isomers, or salts of isomers if the total monthly sales of these  
6 products to persons within the state of Washington exceed ten percent  
7 of the wholesaler's total prior monthly sales of nonprescription drugs  
8 to persons within the state. For purposes of this section, monthly  
9 sales means total dollars paid by buyers. The board may suspend or  
10 revoke the license of any wholesaler that violates this section.

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

18 (6) The requirements for a license apply to all persons, in  
19 Washington and outside of Washington, who sell both legend drugs and  
20 nonprescription drugs and to those who sell only nonprescription drugs,  
21 at wholesale to pharmacies, practitioners, and shopkeepers in  
22 Washington.

23 (7) No wholesaler may sell any quantity of ephedrine,  
24 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts  
25 of isomers, to any person in Washington other than a pharmacy licensed  
26 under this chapter, (~~(a shopkeeper or itinerant vendor registered under~~  
27 ~~this chapter,~~)) or a practitioner as defined in RCW 18.64.011. A  
28 violation of this subsection is punishable as a class C felony  
29 according to chapter 9A.20 RCW, and each sale in violation of this  
30 subsection constitutes a separate offense.

31 **Sec. 5.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to read  
32 as follows:

33 (1) Any itinerant vendor or any peddler of any nonprescription drug  
34 or preparation for the treatment of disease or injury, shall pay a  
35 registration fee determined by the secretary on a date to be determined  
36 by the secretary as provided in RCW 43.70.250 and 43.70.280. The

1 department may issue a registration to such vendor on an approved  
2 application made to the department.

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

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

14 ~~((4) An itinerant vendor may purchase ephedrine, pseudoephedrine,  
15 or phenylpropanolamine, or their salts, isomers, or salts of isomers  
16 only from a wholesaler licensed by the department under RCW 18.64.046  
17 or from a manufacturer licensed by the department under RCW 18.64.045.  
18 The board shall issue a warning to an itinerant vendor who violates  
19 this subsection, and may suspend or revoke the registration of the  
20 vendor for a subsequent violation.~~

21 ~~(5) An itinerant vendor who has purchased ephedrine,  
22 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
23 salts of isomers, in a suspicious transaction as defined in RCW  
24 69.43.035, is subject to the following requirements:~~

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

37 ~~(b) The itinerant vendor shall maintain inventory records of the  
38 receipt and disposition of nonprescription drugs, utilizing existing~~

1 ~~inventory controls if an auditor or investigator can determine~~  
2 ~~compliance with (a) of this subsection, and otherwise in the form and~~  
3 ~~manner required by the board. The records must be available for~~  
4 ~~inspection by the board or any law enforcement agency and must be~~  
5 ~~maintained for two years. The board may suspend or revoke the~~  
6 ~~registration of an itinerant vendor who violates this subsection. For~~  
7 ~~purposes of this subsection, "disposition" means the return of product~~  
8 ~~to the wholesaler or distributor.) )~~

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