
ENGROSSED SUBSTITUTE HOUSE BILL 2266

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 03/04/05.

1 AN ACT Relating to the sale of ephedrine, pseudoephedrine, and
2 phenylpropanolamine; amending RCW 18.64.044, 18.64.046, and 18.64.047;
3 adding new sections to chapter 69.43 RCW; creating a new section; and
4 prescribing penalties.

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

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

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

13 Any product containing ephedrine, pseudoephedrine, or
14 phenylpropanolamine, or their salts, isomers, or salts of isomers as
15 its only active ingredient, dispensed, sold, or distributed at retail
16 shall be dispensed, sold, or distributed only by a licensed pharmacist,
17 an employee of a pharmacy or pharmacist, or a practitioner as defined
18 in RCW 18.64.011, or an employee of a practitioner. A pharmacist or

1 practitioner purchasing, receiving, or otherwise acquiring any product
2 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
3 salts, isomers, or salts of isomers as its only active ingredient, must
4 provide adequate identification verifying that the pharmacist is
5 licensed by the state. A pharmacist or practitioner that dispenses,
6 sells, or distributes any product containing ephedrine,
7 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
8 salts of isomers as its only active ingredient, must comply with all of
9 the requirements of section 3 of this act.

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

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

18 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
19 registered with, the department of health under chapter 18.64 RCW, or
20 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
21 traditional Chinese herbal practitioner may not knowingly sell,
22 transfer, or otherwise furnish to any person a product at retail that
23 he or she knows to contain any detectable quantity of ephedrine,
24 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
25 salts of isomers, without first obtaining photo identification of the
26 person that shows the date of birth of the person, and having the
27 person sign a written log or receipt showing the date of the
28 transaction, the name of the person, and the amount of the product
29 being sold, transferred, or otherwise furnished. The written log must
30 be maintained for a period of two years.

31 (3) A person buying or receiving a product at retail containing any
32 detectable quantity of ephedrine, pseudoephedrine, or
33 phenylpropanolamine, or their salts, isomers, or salts of isomers, from
34 a pharmacy licensed by, or shopkeeper or itinerant vendor registered
35 with, the department of health under chapter 18.64 RCW, or an employee
36 thereof, a practitioner as defined in RCW 18.64.011, or a traditional
37 Chinese herbal practitioner must first produce photo identification of

1 the person that shows the date of birth of the person, and sign a
2 written log or receipt showing the date of the transaction, the name of
3 the person, and the amount of the product being sold, transferred, or
4 otherwise furnished.

5 (4) Any product containing any detectable quantity of ephedrine,
6 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
7 salts of isomers, shall be kept in a location that is not accessible by
8 customers without assistance of an employee of the merchant. If the
9 product contains ephedrine, pseudoephedrine, or phenylpropanolamine, or
10 their salts, isomers, or salts of isomers as its only active
11 ingredient, the product must be kept in a location within the pharmacy
12 area that is not accessible by customers.

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

20 (6) A pharmacy licensed by, or shopkeeper or itinerant vendor
21 registered with, the department of health under chapter 18.64 RCW, or
22 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
23 traditional Chinese herbal practitioner shall provide access to the
24 written log to the board of pharmacy or department of health if
25 necessary for regulatory activities.

26 (7) The board of pharmacy, by rule, may exempt products containing
27 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
28 isomers, or salts of isomers, in combination with another active
29 ingredient from the requirements of this section if they are found not
30 to be used in the illegal manufacture of methamphetamine or other
31 controlled dangerous substances. A manufacturer of a drug product may
32 apply for removal of the product from the requirements of this section
33 if the product is determined by the board to have been formulated in
34 such a way as to effectively prevent the conversion of the active
35 ingredient into methamphetamine. The burden of proof for exemption is
36 upon the person requesting the exemption. The petitioner shall provide
37 the board with evidence that the product has been formulated in such a
38 way as to serve as an effective general deterrent to the conversion of

1 pseudoephedrine into methamphetamine. The evidence must include the
2 furnishing of a valid scientific study, conducted by an independent,
3 professional laboratory and evincing professional quality chemical
4 analysis. Factors to be considered in whether a product should be
5 excluded from this section include but are not limited to:

6 (a) Ease with which the product can be converted to
7 methamphetamine;

8 (b) Ease with which pseudoephedrine is extracted from the substance
9 and whether it forms an emulsion, salt, or other form;

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

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

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

17 (8) Nothing in this section applies:

18 (a) To any product containing ephedrine, pseudoephedrine, or
19 phenylpropanolamine, or their salts, isomers, or salts of isomers that
20 is not the only active ingredient and that is in liquid, liquid
21 capsule, or gel capsule form;

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

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

26 (d) When the details of the transaction are recorded in a pharmacy
27 profile individually identified with the recipient and maintained by a
28 licensed pharmacy.

29 (9)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor
30 registered with, the department of health under chapter 18.64 RCW, a
31 practitioner as defined in RCW 18.64.011, or a traditional Chinese
32 herbal practitioner may retaliate against any employee that has made a
33 good faith attempt to comply with the requirements of this section by
34 requesting that a customer present photo identification, making a
35 reasonable effort to determine the customer's age, and documenting the
36 transaction in the written log.

37 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
38 registered with, the department of health under chapter 18.64 RCW, a

1 practitioner as defined in RCW 18.64.011, or a traditional Chinese
2 herbal practitioner is subject to prosecution under subsection (10) of
3 this section if they made a good faith attempt to comply with the
4 requirements of this section by requesting that a customer present
5 photo identification, making a reasonable effort to determine the
6 customer's age, and documenting the transaction in the written log.

7 (10) A violation of this section is a gross misdemeanor.

8 **Sec. 4.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to read
9 as follows:

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

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

26 (3) The registration fees determined by the secretary under
27 subsection (2) of this section shall not exceed the cost of registering
28 the shopkeeper.

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

34 (5) A shopkeeper who is not a licensed pharmacy may purchase
35 products containing ephedrine, pseudoephedrine, or phenylpropanolamine,
36 or their salts, isomers, or salts of isomers, in combination with
37 another active ingredient, only from a wholesaler licensed by the

1 department under RCW 18.64.046 or from a manufacturer licensed by the
2 department under RCW 18.64.045. The board shall issue a warning to a
3 shopkeeper who violates this subsection, and may suspend or revoke the
4 registration of the shopkeeper for a subsequent violation.

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

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

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

32 **Sec. 5.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to read
33 as follows:

34 (1) The owner of each place of business which sells legend drugs
35 and nonprescription drugs, or nonprescription drugs at wholesale shall
36 pay a license fee to be determined by the secretary, and thereafter, on
37 or before a date to be determined by the secretary as provided in RCW

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

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

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

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

34 (5) The board may exempt a wholesaler from the limitations of
35 subsection (4) of this section if it finds that the wholesaler
36 distributes nonprescription drugs only through transactions between
37 divisions, subsidiaries, or related companies when the wholesaler and

1 the retailer are related by common ownership, and that neither the
2 wholesaler nor the retailer has a history of suspicious transactions in
3 precursor drugs as defined in RCW 69.43.035.

4 (6) The requirements for a license apply to all persons, in
5 Washington and outside of Washington, who sell both legend drugs and
6 nonprescription drugs and to those who sell only nonprescription drugs,
7 at wholesale to pharmacies, practitioners, and shopkeepers in
8 Washington.

9 (7)(a) No wholesaler may sell any product containing ephedrine,
10 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
11 salts of isomers, as its only active ingredient, to any person in
12 Washington other than a pharmacy licensed under this chapter or a
13 practitioner as defined in RCW 18.64.011.

14 (b) No wholesaler may sell any ((quantity)) product containing any
15 detectable quantity of ephedrine, pseudoephedrine, phenylpropanolamine,
16 or their salts, isomers, or salts of isomers in combination with
17 another active ingredient, to any person in Washington other than a
18 pharmacy licensed under this chapter, a shopkeeper or itinerant vendor
19 registered under this chapter, ((or)) a practitioner as defined in RCW
20 18.64.011, or a traditional Chinese herbal practitioner as defined in
21 section 3 of this act.

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

25 **Sec. 6.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to read
26 as follows:

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

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

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

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

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

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

32 (b) The itinerant vendor shall maintain inventory records of the
33 receipt and disposition of nonprescription drugs, utilizing existing
34 inventory controls if an auditor or investigator can determine
35 compliance with (a) of this subsection, and otherwise in the form and
36 manner required by the board. The records must be available for
37 inspection by the board or any law enforcement agency and must be
38 maintained for two years. The board may suspend or revoke the

1 registration of an itinerant vendor who violates this subsection. For
2 purposes of this subsection, "disposition" means the return of product
3 to the wholesaler or distributor.

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