
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 69.50.212, 18.64.044, 18.64.046, and
3 18.64.047; adding a new section to chapter 69.43 RCW; creating a new
4 section; and 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 (1) For purposes of this section, "traditional Chinese herbal
14 practitioner" means a person who is certified as a diplomate in Chinese
15 herbology from the national certification commission for acupuncture
16 and oriental medicine or who has received a certificate in Chinese
17 herbology from a school accredited by the accreditation council on
18 acupuncture and oriental medicine.

1 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
2 registered with, the department of health under chapter 18.64 RCW, or
3 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
4 traditional Chinese herbal practitioner may not knowingly sell,
5 transfer, or otherwise furnish to any person a product at retail that
6 he or she knows to contain ephedrine, pseudoephedrine, or
7 phenylpropanolamine, or their salts, isomers, or salts of isomers, in
8 combination with another active ingredient, without first obtaining
9 photo identification of the person that shows the date of birth of the
10 person, and having the person sign a written log or receipt showing the
11 date of the transaction, the name of the person, and the amount of the
12 product being sold, transferred, or otherwise furnished.

13 (3) A person buying or receiving a product at retail containing
14 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
15 isomers, or salts of isomers, in combination with another active
16 ingredient, from a pharmacy licensed by, or shopkeeper or itinerant
17 vendor registered with, the department of health under chapter 18.64
18 RCW, or an employee thereof, a practitioner as defined in RCW
19 18.64.011, or a traditional Chinese herbal practitioner must first
20 produce photo identification of the person that shows the date of birth
21 of the person, and sign a written log or receipt showing the date of
22 the transaction, the name of the person, and the amount of the product
23 being sold, transferred, or otherwise furnished.

24 (4) Any product containing any amount of ephedrine,
25 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
26 salts of isomers, in combination with another active ingredient, shall
27 be kept in a location that is not accessible by customers without
28 assistance of an employee of the merchant.

29 (5) No pharmacy licensed by, or shopkeeper or itinerant vendor
30 registered with, the department of health under chapter 18.64 RCW, or
31 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
32 traditional Chinese herbal practitioner may sell any product containing
33 any amount of ephedrine, pseudoephedrine, or phenylpropanolamine, or
34 their salts, isomers, or salts of isomers, in combination with another
35 active ingredient to a person that is not at least eighteen years old.
36 This provision does not apply to products sold by prescription under
37 RCW 69.50.212.

1 (6) The following products are exempt from the requirements of this
2 section:

3 (a) Any product containing ephedrine, pseudoephedrine, or
4 phenylpropanolamine, or their salts, isomers, or salts of isomers that
5 is not the only active ingredient and that is in liquid, liquid
6 capsule, or gel capsule form;

7 (b) Any product containing ephedrine, pseudoephedrine, or
8 phenylpropanolamine, or their salts, isomers, or salts of isomers, that
9 consists of a glycerin matrix that inhibits conversion into a
10 controlled substance; or

11 (c) Any compounds, mixtures, or preparations containing ephedrine,
12 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
13 salts of isomers, that the state board of pharmacy, by rule, has
14 determined to have been formulated in such a way as to effectively
15 prevent conversion of the active ingredient into methamphetamine.

16 (7) 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 shall provide access to the
20 written log to the board of pharmacy or department of health if
21 necessary for regulatory activities.

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

1 (a) Ease with which the product can be converted to
2 methamphetamine;

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

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

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

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

12 (9) Nothing in this section applies:

13 (a) To the sale of any compound, mixture, or preparation that
14 contains ephedrine, pseudoephedrine, or phenylpropanolamine, or their
15 salts, isomers, or salts of isomers, as its only active ingredient,
16 that is a Schedule V controlled substance under RCW 69.50.212;

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

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

21 (d) When the details of the transaction are recorded in a pharmacy
22 profile individually identified with the recipient and maintained by a
23 licensed pharmacy or registered shopkeeper or itinerant vendor.

24 (10)(a) 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 may retaliate against any employee that has made a
28 good faith attempt to comply with the requirements of this section by
29 requesting that a customer present photo identification and documenting
30 the transaction in the written log.

31 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
32 registered with, the department of health under chapter 18.64 RCW, a
33 practitioner as defined in RCW 18.64.011, or a traditional Chinese
34 herbal practitioner is subject to prosecution under subsection (11) of
35 this section if they made a good faith attempt to comply with the
36 requirements of this section by requesting that a customer present
37 photo identification, make a reasonable effort to determine the
38 customer's age, and documenting the transaction in the written log.

1 (11) A violation of this section is a gross misdemeanor.

2 **Sec. 3.** RCW 69.50.212 and 1993 c 187 s 12 are each amended to read
3 as follows:

4 Unless specifically excepted by state or federal law or regulation
5 or more specifically included in another schedule, the following
6 controlled substances are listed in Schedule V:

7 (a) Any material, compound, mixture, or preparation containing any
8 of the following narcotic drug and its salts: Buprenorphine.

9 (b) Any compound, mixture, or preparation containing any of the
10 following narcotic drugs, or their salts calculated as the free
11 anhydrous base or alkaloid, in limited quantities as set forth in this
12 subsection, which also contains one or more nonnarcotic active
13 medicinal ingredients in sufficient proportion to confer upon the
14 compound, mixture, or preparation, valuable medicinal qualities other
15 than those possessed by the narcotic drug alone:

16 (1) Not more than 200 milligrams of codeine per 100 milliliters or
17 per 100 grams;

18 (2) Not more than 100 milligrams of dihydrocodeine per 100
19 milliliters or per 100 grams;

20 (3) Not more than 100 milligrams of ethylmorphine per 100
21 milliliters or per 100 grams;

22 (4) Not more than 2.5 milligrams of diphenoxylate and not less than
23 25 micrograms of atropine sulfate per dosage unit;

24 (5) Not more than 100 milligrams of opium per 100 milliliters or
25 per 100 grams;

26 (6) Not more than 0.5 milligrams of difenoxin and not less than 25
27 micrograms of atropine sulfate per dosage unit.

28 (c) Any material, compound, mixture, or preparation containing any
29 quantity of the following substances having a stimulant effect on the
30 central nervous system, including their salts, isomers, and salts of
31 isomers: Pyrovalerone.

32 (d) Any compound, mixture, or preparation that contains ephedrine,
33 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
34 salts of isomers, as its only active ingredient. The requirements
35 related to photo identification, written logs, and age limitations of
36 section 2 of this act do not apply to these compounds, mixtures, or
37 preparations.

1 The controlled substances listed in this section may be rescheduled
2 or deleted as provided for in RCW 69.50.201.

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

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

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

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

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

29 (5) A shopkeeper who is not a licensed pharmacy may purchase
30 products containing ephedrine, pseudoephedrine, or phenylpropanolamine,
31 or their salts, isomers, or salts of isomers, in combination with
32 another active ingredient, or as otherwise permitted under section 2 of
33 this act, only from a wholesaler licensed by the department under RCW
34 18.64.046 or from a manufacturer licensed by the department under RCW
35 18.64.045. The board shall issue a warning to a shopkeeper who
36 violates this subsection, and may suspend or revoke the registration of
37 the shopkeeper for a subsequent violation.

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

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

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

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

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

1 the secretary, and each such owner shall at the time of payment of such
2 fee file with the department, on a blank therefor provided, a
3 declaration of ownership and location, which declaration of ownership
4 and location so filed as aforesaid shall be deemed presumptive evidence
5 of the ownership of such place of business mentioned therein. It shall
6 be the duty of the owner to notify immediately the department of any
7 change of location and ownership and to keep the license of location or
8 the renewal thereof properly exhibited in such place of business.

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

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

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

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

36 (6) The requirements for a license apply to all persons, in
37 Washington and outside of Washington, who sell both legend drugs and

1 nonprescription drugs and to those who sell only nonprescription drugs,
2 at wholesale to pharmacies, practitioners, and shopkeepers in
3 Washington.

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

9 (b) No wholesaler may sell any ((quantity)) product containing any
10 amount of ephedrine, pseudoephedrine, phenylpropanolamine, or their
11 salts, isomers, or salts of isomers in combination with another active
12 ingredient, or as otherwise permitted under section 2 of this act, to
13 any person in Washington other than a pharmacy licensed under this
14 chapter, a shopkeeper or itinerant vendor registered under this
15 chapter, ((or)) a practitioner as defined in RCW 18.64.011, or a
16 traditional Chinese herbal practitioner as defined in section 2 of this
17 act.

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

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

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

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

34 (3) In event the registration fee remains unpaid on the date due,
35 no renewal or new registration shall be issued except upon compliance
36 with administrative procedures, administrative requirements, and fees

1 determined as provided in RCW 43.70.250 and 43.70.280. This
2 registration shall not authorize the sale of legend drugs or controlled
3 substances.

4 (4) An itinerant vendor may purchase products containing ephedrine,
5 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
6 salts of isomers in combination with another active ingredient, or as
7 otherwise permitted under section 2 of this act only from a wholesaler
8 licensed by the department under RCW 18.64.046 or from a manufacturer
9 licensed by the department under RCW 18.64.045. The board shall issue
10 a warning to an itinerant vendor who violates this subsection, and may
11 suspend or revoke the registration of the vendor for a subsequent
12 violation.

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

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

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

1 purposes of this subsection, "disposition" means the return of product
2 to the wholesaler or distributor.

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