

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2266

59th Legislature
2005 Regular Session

Passed by the House April 23, 2005
Yeas 91 Nays 5

Speaker of the House of Representatives

Passed by the Senate April 23, 2005
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2266** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2266

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2005 Regular Session

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 69.43.110, 18.64.044, 18.64.046, and
3 18.64.047; adding new sections to chapter 69.43 RCW; creating new
4 sections; prescribing penalties; providing effective dates; and
5 declaring an emergency.

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

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

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

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

1 herbology from a school accredited by the accreditation council on
2 acupuncture and oriental medicine.

3 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
4 registered with, the department of health under chapter 18.64 RCW, or
5 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
6 traditional Chinese herbal practitioner may not knowingly sell,
7 transfer, or otherwise furnish to any person a product at retail that
8 he or she knows to contain any detectable quantity of ephedrine,
9 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
10 salts of isomers, without first obtaining photo identification of the
11 person that shows the date of birth of the person.

12 (3) A person buying or receiving a product at retail containing any
13 detectable quantity of ephedrine, pseudoephedrine, or
14 phenylpropanolamine, or their salts, isomers, or salts of isomers, from
15 a pharmacy licensed by, or shopkeeper or itinerant vendor registered
16 with, the department of health under chapter 18.64 RCW, or an employee
17 thereof, a practitioner as defined in RCW 18.64.011, or a traditional
18 Chinese herbal practitioner must first produce photo identification of
19 the person that shows the date of birth of the person.

20 (4) Any product containing any detectable quantity of ephedrine,
21 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
22 salts of isomers, shall be kept in a central location that is not
23 accessible by customers without assistance of an employee of the
24 merchant.

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

32 (6) The board of pharmacy, by rule, may exempt products containing
33 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
34 isomers, or salts of isomers, in combination with another active
35 ingredient from the requirements of this section if they are found not
36 to be used in the illegal manufacture of methamphetamine or other
37 controlled dangerous substances. A manufacturer of a drug product may
38 apply for removal of the product from the requirements of this section

1 if the product is determined by the board to have been formulated in
2 such a way as to effectively prevent the conversion of the active
3 ingredient into methamphetamine. The burden of proof for exemption is
4 upon the person requesting the exemption. The petitioner shall provide
5 the board with evidence that the product has been formulated in such a
6 way as to serve as an effective general deterrent to the conversion of
7 pseudoephedrine into methamphetamine. The evidence must include the
8 furnishing of a valid scientific study, conducted by an independent,
9 professional laboratory and evincing professional quality chemical
10 analysis. Factors to be considered in whether a product should be
11 excluded from this section include but are not limited to:

12 (a) Ease with which the product can be converted to
13 methamphetamine;

14 (b) Ease with which ephedrine, pseudoephedrine, or
15 phenylpropanolamine is extracted from the substance and whether it
16 forms an emulsion, salt, or other form;

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

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

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

24 (7) Nothing in this section applies:

25 (a) To any product containing ephedrine, pseudoephedrine, or
26 phenylpropanolamine, or their salts, isomers, or salts of isomers that
27 is not the only active ingredient and that is in liquid, liquid
28 capsule, or gel capsule form;

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

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

33 (d) When the details of the transaction are recorded in a pharmacy
34 profile individually identified with the recipient and maintained by a
35 licensed pharmacy.

36 (8)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor
37 registered with, the department of health under chapter 18.64 RCW, a
38 practitioner as defined in RCW 18.64.011, or a traditional Chinese

1 herbal practitioner may retaliate against any employee that has made a
2 good faith attempt to comply with the requirements of this section by
3 requesting that a customer present photo identification, making a
4 reasonable effort to determine the customer's age.

5 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
6 registered with, the department of health under chapter 18.64 RCW, a
7 practitioner as defined in RCW 18.64.011, or a traditional Chinese
8 herbal practitioner is subject to prosecution under subsection (9) of
9 this section if they made a good faith attempt to comply with the
10 requirements of this section by requesting that a customer present
11 photo identification, making a reasonable effort to determine the
12 customer's age.

13 (9) A violation of this section is a gross misdemeanor.

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

16 (1) The Washington association of sheriffs and police chiefs or the
17 Washington state patrol may petition the state board of pharmacy to
18 apply the log requirements in section 8 of this act to one or more
19 products that contain ephedrine, pseudoephedrine, or
20 phenylpropanolamine, or their salts, isomers, or salts of isomers, that
21 is not the only active ingredient and that is in liquid, liquid
22 capsule, or gel capsule form. The petition shall establish that:

23 (a) Ephedrine, pseudoephedrine, or phenylpropanolamine can be
24 effectively extracted from the product and converted into
25 methamphetamine or another controlled dangerous substance; and

26 (b) Law enforcement, the Washington state patrol, or the department
27 of ecology are finding substantial evidence that the product is being
28 used for the illegal manufacture of methamphetamine or another
29 controlled dangerous substance.

30 (2) The board of pharmacy shall adopt rules when a petition
31 establishes that requiring the application of the log requirements in
32 section 8 of this act to the sale of the product at retail is warranted
33 based upon the effectiveness and extent of use of the product for the
34 illegal manufacture of methamphetamine or other controlled dangerous
35 substances and the extent of the burden of any restrictions upon
36 consumers. The board of pharmacy may adopt emergency rules to apply

1 the log requirements to the sale of a product when the petition
2 establishes that the immediate restriction of the product is necessary
3 in order to protect public health and safety.

4 **Sec. 4.** RCW 69.43.110 and 2004 c 52 s 5 are each amended to read
5 as follows:

6 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or
7 itinerant vendor registered with, the department of health under
8 chapter 18.64 RCW, or an employee thereof, or a practitioner as defined
9 in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish,
10 in a single transaction:

11 (a) More than (~~three~~) two packages of one or more products that
12 he or she knows to contain ephedrine, pseudoephedrine, or
13 phenylpropanolamine, their salts, isomers, or salts of isomers; or

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

18 (2) It is unlawful for a person who is not a manufacturer,
19 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor
20 licensed by or registered with the department of health under chapter
21 18.64 RCW to purchase or acquire, in any twenty-four hour period, more
22 than the quantities of the substances specified in subsection (1) of
23 this section.

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

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

29 **Sec. 5.** RCW 18.64.044 and 2004 c 52 s 2 are each amended to read
30 as follows:

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

34 (2) Every shopkeeper not a licensed pharmacist, desiring to secure
35 the benefits and privileges of this section, is hereby required to
36 register as a shopkeeper through the master license system, and he or

1 she shall pay the fee determined by the secretary for registration, and
2 on a date to be determined by the secretary thereafter the fee
3 determined by the secretary for renewal of the registration; and shall
4 at all times keep said registration or the current renewal thereof
5 conspicuously exposed in the location to which it applies. In event
6 such shopkeeper's registration is not renewed by the master license
7 expiration date, no renewal or new registration shall be issued except
8 upon payment of the registration renewal fee and the master license
9 delinquency fee under chapter 19.02 RCW. This registration fee shall
10 not authorize the sale of legend drugs or controlled substances.

11 (3) The registration fees determined by the secretary under
12 subsection (2) of this section shall not exceed the cost of registering
13 the shopkeeper.

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

19 (5) A shopkeeper who is not a licensed pharmacy may purchase
20 products containing any detectable quantity of ephedrine,
21 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
22 salts of isomers, only from a wholesaler licensed by the department
23 under RCW 18.64.046 or from a manufacturer licensed by the department
24 under RCW 18.64.045. The board shall issue a warning to a shopkeeper
25 who violates this subsection, and may suspend or revoke the
26 registration of the shopkeeper for a subsequent violation.

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

32 (a) The shopkeeper may not sell any quantity of ephedrine,
33 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
34 salts of isomers, if the total monthly sales of these products exceed
35 ten percent of the shopkeeper's total prior monthly sales of
36 nonprescription drugs in March through October. In November through
37 February, the shopkeeper may not sell any quantity of ephedrine,
38 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or

1 salts of isomers, if the total monthly sales of these products exceed
2 twenty percent of the shopkeeper's total prior monthly sales of
3 nonprescription drugs. For purposes of this section, "monthly sales"
4 means total dollars paid by buyers. The board may suspend or revoke
5 the registration of a shopkeeper who violates this subsection.

6 (b) The shopkeeper shall maintain inventory records of the receipt
7 and disposition of nonprescription drugs, utilizing existing inventory
8 controls if an auditor or investigator can determine compliance with
9 (a) of this subsection, and otherwise in the form and manner required
10 by the board. The records must be available for inspection by the
11 board or any law enforcement agency and must be maintained for two
12 years. The board may suspend or revoke the registration of a
13 shopkeeper who violates this subsection. For purposes of this
14 subsection, "disposition" means the return of product to the wholesaler
15 or distributor.

16 **Sec. 6.** RCW 18.64.046 and 2004 c 52 s 3 are each amended to read
17 as follows:

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

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

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

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

19 (5) The board may exempt a wholesaler from the limitations of
20 subsection (4) of this section if it finds that the wholesaler
21 distributes nonprescription drugs only through transactions between
22 divisions, subsidiaries, or related companies when the wholesaler and
23 the retailer are related by common ownership, and that neither the
24 wholesaler nor the retailer has a history of suspicious transactions in
25 precursor drugs as defined in RCW 69.43.035.

26 (6) The requirements for a license apply to all persons, in
27 Washington and outside of Washington, who sell both legend drugs and
28 nonprescription drugs and to those who sell only nonprescription drugs,
29 at wholesale to pharmacies, practitioners, and shopkeepers in
30 Washington.

31 (7)(a) No wholesaler may sell any (~~quantity~~) product containing
32 any detectable quantity of ephedrine, pseudoephedrine,
33 phenylpropanolamine, or their salts, isomers, or salts of isomers, to
34 any person in Washington other than a pharmacy licensed under this
35 chapter, a shopkeeper or itinerant vendor registered under this
36 chapter, (~~or~~) a practitioner as defined in RCW 18.64.011, or a
37 traditional Chinese herbal practitioner as defined in section 2 of this
38 act.

1 **(b)** A violation of this subsection is punishable as a class C
2 felony according to chapter 9A.20 RCW, and each sale in violation of
3 this subsection constitutes a separate offense.

4 **Sec. 7.** RCW 18.64.047 and 2004 c 52 s 4 are each amended to read
5 as follows:

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

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

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

23 (4) An itinerant vendor may purchase products containing any
24 detectable quantity of ephedrine, pseudoephedrine, or
25 phenylpropanolamine, or their salts, isomers, or salts of isomers only
26 from a wholesaler licensed by the department under RCW 18.64.046 or
27 from a manufacturer licensed by the department under RCW 18.64.045.
28 The board shall issue a warning to an itinerant vendor who violates
29 this subsection, and may suspend or revoke the registration of the
30 vendor for a subsequent violation.

31 (5) An itinerant vendor who has purchased products containing any
32 detectable quantity of ephedrine, pseudoephedrine, or
33 phenylpropanolamine, or their salts, isomers, or salts of isomers, in
34 a suspicious transaction as defined in RCW 69.43.035, is subject to the
35 following requirements:

36 (a) The itinerant vendor may not sell any quantity of ephedrine,
37 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or

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

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

21 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.43 RCW
22 to read as follows:

23 (1) The state board of pharmacy, using procedures under chapter
24 34.05 RCW, shall implement and conduct a statewide pilot project
25 requiring the collection and maintenance of written or electronic logs
26 or other alternative means of recording retail transactions involving
27 ephedrine, pseudoephedrine, or phenylpropanolamine. The rules
28 implementing the pilot project shall be in place by January 1, 2006.

29 (2) The pilot project shall be designed to address:

30 (a) Whether a log or other means of recording a transaction is an
31 effective law enforcement tool;

32 (b) What information is needed to make logs or other means of
33 recording a transaction useful as a deterrent to criminal activity;

34 (c) The most effective method of obtaining, recording, and storing
35 log or other electronic data in the least intrusive manner available;

36 (d) How long the information recorded in the logs or other means of
37 recording a transaction should be maintained; and

1 (e) How logs or other means of recording a transaction can be most
2 effectively transmitted to law enforcement and the state board of
3 pharmacy.

4 (3) The board shall convene a work group to evaluate the data
5 collected during the pilot project. The work group shall consist of:

6 (a) One representative from law enforcement appointed by the
7 Washington association of sheriffs and police chiefs;

8 (b) One representative from the Washington state patrol;

9 (c) One representative appointed by the Washington association of
10 prosecuting attorneys;

11 (d) One representative appointed by the office of the attorney
12 general;

13 (e) One representative appointed by the state board of pharmacy;
14 and

15 (f) Two representatives from the retail industry.

16 (4) The state board of pharmacy shall begin data collection for the
17 pilot project no later than January 1, 2006, and report to the
18 legislature no later than November 1, 2007, regarding the findings of
19 the work group along with any recommendations or proposed legislation.

20 (5) Any orders and rules adopted under this section not in conflict
21 with state law continue in effect until modified, superseded, or
22 repealed. The board may implement rule changes based upon the results
23 of the pilot project and recommendations of the work group.

24 (6)(a) The records required by this section are for the
25 confidential use of the pharmacy, shopkeeper, or itinerant vendor,
26 except that:

27 (i) Every pharmacy, shopkeeper, or itinerant vendor shall produce
28 the records in court whenever lawfully required to do so;

29 (ii) The records shall be open for inspection by the board of
30 pharmacy; and

31 (iii) The records shall be open for inspection by any general or
32 limited authority Washington peace officer to enforce the provisions of
33 this chapter.

34 (b) A person violating this subsection is guilty of a misdemeanor.

35 NEW SECTION. **Sec. 9.** Each county sheriff shall compile and
36 maintain a record of commercial products containing ephedrine,
37 pseudoephedrine, or phenylpropanolamine and packaging found at

1 methamphetamine laboratory sites. The data shall be forwarded to the
2 Washington association of sheriffs and police chiefs and shall be
3 reported to the legislature by November 1, 2007, and annually
4 thereafter.

5 NEW SECTION. **Sec. 10.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 11.** (1) Section 2 of this act takes effect
10 October 1, 2005.

11 (2) Sections 1, 3 through 7, 9, and 10 of this act take effect
12 January 1, 2006.

13 (3) Section 8 of this act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 immediately.

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