
SECOND SUBSTITUTE HOUSE BILL 2961

State of Washington

61st Legislature

2010 Regular Session

By House Health & Human Services Appropriations (originally sponsored by Representatives Campbell, Hurst, Morrell, Kelley, and Ormsby)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to establishing a statewide electronic tracking
2 system for the nonprescription sales of ephedrine, pseudoephedrine, and
3 phenylpropanolamine; amending RCW 69.43.105, 69.43.110, and 42.56.240;
4 adding new sections to chapter 69.43 RCW; and repealing RCW 69.43.170.

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

6 **Sec. 1.** RCW 69.43.105 and 2005 c 388 s 2 are each amended to read
7 as follows:

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

14 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
15 registered with, the department of health under chapter 18.64 RCW, or
16 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
17 traditional Chinese herbal practitioner may not knowingly sell,
18 transfer, or otherwise furnish to any person a product at retail that
19 he or she knows to contain any detectable quantity of ephedrine,

1 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
2 salts of isomers, without first obtaining photo identification of the
3 person that shows the date of birth of the person.

4 (3) A person buying or receiving a product at retail containing any
5 detectable quantity of ephedrine, pseudoephedrine, or
6 phenylpropanolamine, or their salts, isomers, or salts of isomers, from
7 a pharmacy licensed by, or shopkeeper or itinerant vendor registered
8 with, the department of health under chapter 18.64 RCW, or an employee
9 thereof, a practitioner as defined in RCW 18.64.011, or a traditional
10 Chinese herbal practitioner must first produce photo identification of
11 the person that shows the date of birth of the person.

12 (4) Any product containing any detectable quantity of ephedrine,
13 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
14 salts of isomers, shall be kept (a) behind a counter where the public
15 is not permitted, or (b) in a ((central location)) locked display case
16 so that ((is not accessible by)) a customer((s without assistance of))
17 wanting access must ask an employee of the merchant for assistance.

18 (5) No 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 sell any product containing
22 any detectable quantity of ephedrine, pseudoephedrine, or
23 phenylpropanolamine, or their salts, isomers, or salts of isomers, to
24 a person that is not at least eighteen years old.

25 (6) A pharmacy licensed by, or shopkeeper or itinerant vendor
26 registered with, the department of health under chapter 18.64 RCW
27 selling a nonprescription drug containing ephedrine, pseudoephedrine,
28 phenylpropanolamine, or their salts, isomers, or salts of isomers shall
29 require the purchaser to electronically or manually sign a record of
30 the transaction. The record must include the name and address of the
31 purchaser, the date and time of the sale, the name and initials of the
32 shopkeeper, itinerant vendor, pharmacist, pharmacy technician, or
33 employee conducting the transaction, the name of the product being
34 sold, as well as the total quantity in grams, of ephedrine,
35 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
36 of isomers, being sold.

37 (7) The board of pharmacy, by rule, may exempt products containing
38 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,

1 isomers, or salts of isomers, in combination with another active
2 ingredient from the requirements of this section if they are found not
3 to be used in the illegal manufacture of methamphetamine or other
4 controlled dangerous substances. A manufacturer of a drug product may
5 apply for removal of the product from the requirements of this section
6 if the product is determined by the board to have been formulated in
7 such a way as to effectively prevent the conversion of the active
8 ingredient into methamphetamine. The burden of proof for exemption is
9 upon the person requesting the exemption. The petitioner shall provide
10 the board with evidence that the product has been formulated in such a
11 way as to serve as an effective general deterrent to the conversion of
12 pseudoephedrine into methamphetamine. The evidence must include the
13 furnishing of a valid scientific study, conducted by an independent,
14 professional laboratory and evincing professional quality chemical
15 analysis. Factors to be considered in whether a product should be
16 excluded from this section include but are not limited to:

17 (a) Ease with which the product can be converted to
18 methamphetamine;

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

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

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

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

29 ((+7)) (8) Nothing in this section applies:

30 (a) To any product containing ephedrine, pseudoephedrine, or
31 phenylpropanolamine, or their salts, isomers, or salts of isomers that
32 is not the only active ingredient and that is in liquid, liquid
33 capsule, or gel capsule form;

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

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

1 (d) When the details of the transaction are recorded in a pharmacy
2 profile individually identified with the recipient and maintained by a
3 licensed pharmacy.

4 ~~((+8+))~~ (9)(a) No pharmacy licensed by, or shopkeeper or itinerant
5 vendor registered with, the department of health under chapter 18.64
6 RCW, a practitioner as defined in RCW 18.64.011, or a traditional
7 Chinese herbal practitioner may retaliate against any employee that has
8 made a good faith attempt to comply with the requirements of this
9 section by requesting that a customer present photo identification,
10 making a reasonable effort to determine the customer's age.

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

19 ~~((+9+))~~ (10) A violation of this section is a gross misdemeanor.

20 **Sec. 2.** RCW 69.43.110 and 2005 c 388 s 4 are each amended to read
21 as follows:

22 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or
23 itinerant vendor registered with, the department of health under
24 chapter 18.64 RCW, or an employee thereof, or a practitioner as defined
25 in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish,
26 in a single transaction(~~(+~~

27 ~~(a) More than two packages of one or more products that he or she
28 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine,
29 their salts, isomers, or salts of isomers; or~~

30 ~~(b))~~ a ~~((single package of any product that he or she knows to
31 contain))~~ total of more than ~~((three))~~ 3.6 grams of ephedrine,
32 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
33 of isomers, ~~((or a combination of any of these substances))~~ in any
34 twenty-four hour period or more than a total of nine grams per
35 purchaser in any thirty-day period.

36 (2) It is unlawful for a person who is not a manufacturer,
37 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor

1 licensed by or registered with the department of health under chapter
2 18.64 RCW to purchase or acquire(~~(, in any twenty-four hour period,)~~)
3 more than (~~(the quantities)~~) 3.6 grams in any twenty-four hour period,
4 or more than a total of nine grams in any thirty-day period, of the
5 substances specified in subsection (1) of this section.

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

10 (4)(a) A pharmacy licensed by, or shopkeeper or itinerant vendor
11 registered with, the department of health under chapter 18.64 RCW
12 shall, before completing a sale under this section, submit the required
13 information to the electronic sales tracking system established under
14 section 3 of this act, beginning six months after such a system is
15 available without cost to the pharmacy, shopkeeper, or itinerant vendor
16 for accessing the system. The pharmacy, shopkeeper, or itinerant
17 vendor may not complete the sale if the system generates a stop sale
18 alert, except as permitted in section 3 of this act.

19 (b) If a pharmacy, shopkeeper, or itinerant vendor selling a
20 nonprescription drug containing ephedrine, pseudoephedrine, or
21 phenylpropanolamine, or their salts, isomers, or salts of isomers
22 experiences mechanical or electronic failure of the electronic sales
23 tracking system and is unable to comply with the electronic sales
24 tracking requirement, he or she shall maintain a written log or an
25 alternative electronic recordkeeping mechanism until such time as he or
26 she is able to comply with the electronic sales tracking requirement.

27 (c) A pharmacy, shopkeeper, or itinerant vendor selling a
28 nonprescription drug containing ephedrine, pseudoephedrine, or
29 phenylpropanolamine, or their salts, isomers, or salts of isomers may
30 seek an exemption from submitting transactions to the electronic sales
31 tracking system in writing to the board of pharmacy stating the reasons
32 for the exemption. The board may grant an exemption for good cause
33 shown, but in no event shall the exemption exceed one hundred eighty
34 days. A pharmacy, shopkeeper, or itinerant vendor that receives an
35 exemption shall maintain a logbook in hardcopy form and must require
36 the purchaser to provide the information required under this section
37 before the completion of any sale. The logbook shall be maintained as

1 a record of each sale for inspection by any law enforcement officer or
2 board inspector during normal business hours.

3 (d) A pharmacy, shopkeeper, or itinerant vendor may withdraw from
4 participating in the electronic sales tracking system if the system is
5 no longer being furnished without cost for accessing the system. A
6 pharmacy, shopkeeper, or itinerant vendor who withdraws from the
7 electronic sales tracking system is subject to the same requirements as
8 a pharmacy, shopkeeper, or itinerant vendor who has been granted an
9 exemption under (c) of this subsection.

10 (e) For the purposes of this subsection (4) and section 3 of this
11 act:

12 (i) "Cost for accessing the system" means costs relating to:

13 (A) Access to the web-based electronic sales tracking software;

14 (B) The web-based software known as software as a service;

15 (C) Training; and

16 (D) Sixteen hours of technical support to integrate to point of
17 sale vendors, if necessary.

18 (ii) "Cost for accessing the system" does not include:

19 (A) Costs relating to required internet access;

20 (B) Optional hardware that a pharmacy may choose to purchase for
21 work flow purposes; or

22 (C) Other equipment.

23 (5) A violation of this section is a gross misdemeanor.

24 NEW SECTION. Sec. 3. A new section is added to chapter 69.43 RCW
25 to read as follows:

26 (1) The board of pharmacy shall implement a real-time electronic
27 sales tracking system to monitor the nonprescription sale of products
28 in this state containing any detectable quantity of ephedrine,
29 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
30 of isomers, provided that the system is available to the state without
31 cost for accessing the system to the state or retailers. The board is
32 authorized to enter into a public-private partnership, through a
33 memorandum of understanding or similar arrangement, to make the system
34 available.

35 (2) The records submitted to the tracking system are for the
36 confidential use of the pharmacy, shopkeeper, or itinerant vendor who
37 submitted them, except that:

1 (a) The records must be produced in court when lawfully required;

2 (b) The records must be open for inspection by the board of
3 pharmacy; and

4 (c) The records must be available to any general or limited
5 authority Washington peace officer to enforce the provisions of this
6 chapter or to federal law enforcement officers.

7 (3) The electronic sales tracking system shall be capable of
8 generating a stop sale alert, which shall be a notification that
9 completion of the sale would result in the seller or purchaser
10 violating the quantity limits in RCW 69.43.110 (1) and (2). The system
11 shall contain an override function for use by a dispenser of ephedrine,
12 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
13 of isomers, who has a reasonable fear of imminent bodily harm. Each
14 instance in which the override function is utilized shall be logged by
15 the system.

16 (4) The electronic sales tracking system identified in subsection
17 (1) of this section shall be made available no sooner than July 1,
18 2011.

19 (5) The board of pharmacy shall have the authority to adopt rules
20 necessary to implement and enforce the provisions of this section.

21 NEW SECTION. **Sec. 4.** A new section is added to chapter 69.43 RCW
22 to read as follows:

23 A pharmacy, shopkeeper, or itinerant vendor participating in the
24 electronic sales tracking system under RCW 69.43.110(4):

25 (1) Is not liable for civil damages resulting from any act or
26 omission in carrying out the requirements of RCW 69.43.110(4), other
27 than an act or omission constituting gross negligence or willful or
28 wanton misconduct; and

29 (2) Is not liable for civil damages resulting from a data breach
30 that was proximately caused by a failure on the part of the electronic
31 sales tracking system to take reasonable care through the use of
32 industry standard levels of encryption to guard against unauthorized
33 access to account information that is in the possession or control of
34 the system.

35 **Sec. 5.** RCW 42.56.240 and 2008 c 276 s 202 are each amended to
36 read as follows:

1 The following investigative, law enforcement, and crime victim
2 information is exempt from public inspection and copying under this
3 chapter:

4 (1) Specific intelligence information and specific investigative
5 records compiled by investigative, law enforcement, and penology
6 agencies, and state agencies vested with the responsibility to
7 discipline members of any profession, the nondisclosure of which is
8 essential to effective law enforcement or for the protection of any
9 person's right to privacy;

10 (2) Information revealing the identity of persons who are witnesses
11 to or victims of crime or who file complaints with investigative, law
12 enforcement, or penology agencies, other than the commission, if
13 disclosure would endanger any person's life, physical safety, or
14 property. If at the time a complaint is filed the complainant, victim,
15 or witness indicates a desire for disclosure or nondisclosure, such
16 desire shall govern. However, all complaints filed with the commission
17 about any elected official or candidate for public office must be made
18 in writing and signed by the complainant under oath;

19 (3) Any records of investigative reports prepared by any state,
20 county, municipal, or other law enforcement agency pertaining to sex
21 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
22 defined in RCW 71.09.020, which have been transferred to the Washington
23 association of sheriffs and police chiefs for permanent electronic
24 retention and retrieval pursuant to RCW 40.14.070(2)(b);

25 (4) License applications under RCW 9.41.070; copies of license
26 applications or information on the applications may be released to law
27 enforcement or corrections agencies;

28 (5) Information revealing the identity of child victims of sexual
29 assault who are under age eighteen. Identifying information means the
30 child victim's name, address, location, photograph, and in cases in
31 which the child victim is a relative or stepchild of the alleged
32 perpetrator, identification of the relationship between the child and
33 the alleged perpetrator; (~~and~~)

34 (6) The statewide gang database referenced in RCW 43.43.762; and

35 (7) Data from the electronic sales tracking system established in
36 section 3 of this act.

1 NEW SECTION. **Sec. 6.** RCW 69.43.170 (Ephedrine, pseudoephedrine,
2 phenylpropanolamine--Pilot project to record retail transactions--
3 Penalty) and 2005 c 388 s 8 are each repealed.

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