
SENATE BILL 6642

State of Washington

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By Senators Delvin, Kline, and Tom

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1 AN ACT Relating to establishing a statewide electronic tracking
2 system for the nonprescription sales of ephedrine, pseudoephedrine, and
3 phenylpropanolamine; amending RCW 18.64.044, 18.64.047, 69.43.105, and
4 69.43.110; adding a new section to chapter 43.10 RCW; and repealing RCW
5 69.43.170.

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

7 **Sec. 1.** RCW 18.64.044 and 2005 c 388 s 5 are each amended to read
8 as follows:

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

12 (2) Every shopkeeper not a licensed pharmacist, desiring to secure
13 the benefits and privileges of this section, is hereby required to
14 register as a shopkeeper through the master license system, and he or
15 she shall pay the fee determined by the secretary for registration, and
16 on a date to be determined by the secretary thereafter the fee
17 determined by the secretary for renewal of the registration; and shall
18 at all times keep said registration or the current renewal thereof
19 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 products containing any detectable quantity of ephedrine,
16 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
17 salts of isomers, only from a wholesaler licensed by the department
18 under RCW 18.64.046 or from a manufacturer licensed by the department
19 under RCW 18.64.045. The board shall issue a warning to a shopkeeper
20 who violates this subsection, and may suspend or revoke the
21 registration of the shopkeeper for a subsequent violation.

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

27 (a) The shopkeeper may not sell (~~(any quantity)~~) products
28 containing a combined total of more than 3.6 grams per sale or more
29 than nine grams per thirty days of ephedrine, pseudoephedrine, or
30 phenylpropanolamine, or their salts, isomers, or salts of isomers(~~(, if~~
31 ~~the total monthly sales of these products exceed ten percent of the~~
32 ~~shopkeeper's total prior monthly sales of nonprescription drugs in~~
33 ~~March through October. In November through February, the shopkeeper~~
34 ~~may not sell any quantity of ephedrine, pseudoephedrine, or~~
35 ~~phenylpropanolamine, or their salts, isomers, or salts of isomers, if~~
36 ~~the total monthly sales of these products exceed twenty percent of the~~
37 ~~shopkeeper's total prior monthly sales of nonprescription drugs. For~~

1 ~~purposes of this section, "monthly sales" means total dollars paid by~~
2 ~~buyers)).~~ The board may suspend or revoke the registration of a
3 shopkeeper who violates this subsection.

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

14 (c) The shopkeeper must place all packages of tablets containing
15 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
16 isomers, or salts of isomers:

17 (i) Behind a counter where the public is not permitted; or

18 (ii) In a locked display case so that a customer wanting access to
19 the packages must ask an employee for assistance.

20 (d) A shopkeeper selling a nonprescription drug containing
21 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
22 isomers, or salts of isomers shall require the purchaser of the drug or
23 drugs to provide government-issued photographic identification of
24 himself or herself, and to sign a record of the transaction. The
25 record must include the name and address of the purchaser, the date and
26 time of the sale, the name and initials of the shopkeeper, pharmacist,
27 pharmacy technician, or employee conducting the transaction, the name
28 of the product being sold, as well as the total quantity in grams, of
29 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
30 isomers, or salts of isomers, being sold.

31 (7)(a) A shopkeeper shall, before completing a sale under this
32 section, submit the required information to the electronic sales
33 tracking system established under section 5 of this act, beginning six
34 months after such a system is available without cost to the shopkeeper
35 for accessing the system. The shopkeeper shall not complete the sale
36 if the system generates a stop sale alert. Absent negligence,
37 wantonness, recklessness, or deliberate misconduct, any shopkeeper
38 maintaining the electronic sales tracking system in accordance with

1 this subsection shall not be civilly liable as a result of any act or
2 omission in carrying out the duties required by this subsection and
3 shall be immune from liability to any third party unless he or she has
4 violated any provision of this subsection in relation to a claim
5 brought for such violation.

6 (b) If a shopkeeper selling a nonprescription drug containing
7 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
8 isomers, or salts of isomers experiences mechanical or electronic
9 failure of the electronic sales tracking system and is unable to comply
10 with the electronic sales tracking requirement, he or she shall
11 maintain a written log or an alternative electronic recordkeeping
12 mechanism until such time as he or she is able to comply with the
13 electronic sales tracking requirement.

14 (c) A shopkeeper selling a nonprescription drug containing
15 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
16 isomers, or salts of isomers may seek an exemption from submitting
17 transactions to the electronic sales tracking system in writing to the
18 Washington state attorney general stating the reasons for the
19 exemption. The attorney general may grant an exemption for good cause
20 shown, but in no event shall the exemption exceed one hundred eighty
21 days. A shopkeeper that receives an exemption shall maintain a logbook
22 in hardcopy form and must require the purchaser to provide the
23 information required under this section before the completion of any
24 sale. The logbook shall be maintained as a record of each sale for
25 inspection by any law enforcement officer or board inspector during
26 normal business hours.

27 **Sec. 2.** RCW 18.64.047 and 2005 c 388 s 7 are each amended to read
28 as follows:

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

35 (2) Any itinerant vendor or peddler who shall vend or sell, or
36 offer to sell to the public any such nonprescription drug or

1 preparation without having registered to do so as provided in this
2 section, is guilty of a misdemeanor and each sale or offer to sell
3 shall constitute a separate offense.

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

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

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

23 (a) The itinerant vendor may not sell (~~(any quantity)~~) products
24 containing a combined total of more than 3.6 grams per sale or more
25 than nine grams per thirty days of ephedrine, pseudoephedrine, or
26 phenylpropanolamine, or their salts, isomers, or salts of isomers(~~(, if~~
27 ~~the total monthly sales of these products exceed ten percent of the~~
28 ~~vendor's total prior monthly sales of nonprescription drugs in March~~
29 ~~through October. In November through February, the vendor may not sell~~
30 ~~any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or~~
31 ~~their salts, isomers, or salts of isomers, if the total monthly sales~~
32 ~~of these products exceed twenty percent of the vendor's total prior~~
33 ~~monthly sales of nonprescription drugs. For purposes of this section,~~
34 ~~"monthly sales" means total dollars paid by buyers)). The board may~~
35 suspend or revoke the registration of an itinerant vendor who violates
36 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.

9 (c) The itinerant vendor must place all packages of tablets
10 containing ephedrine, pseudoephedrine, phenylpropanolamine, or their
11 salts, isomers, or salts of isomers:

12 (i) Behind a counter where the public is not permitted; or

13 (ii) In a locked display case so that a customer wanting access to
14 the packages must ask an employee for assistance.

15 (6) The itinerant vendor selling a nonprescription drug containing
16 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
17 isomers, or salts of isomers shall require the purchaser of the drug or
18 drugs to provide government-issued photographic identification of
19 himself or herself, and to sign a record of the transaction. The
20 record must include the name and address of the purchaser, the date and
21 time of the sale, the name and initials of the itinerant vendor or
22 employee conducting the transaction, the name of the product being
23 sold, as well as the total quantity in grams, of ephedrine,
24 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
25 of isomers, being sold.

26 (7)(a) An itinerant vendor shall, before completing a sale under
27 this section, submit the required information to the electronic sales
28 tracking system established under section 5 of this act, beginning six
29 months after such a system is available without cost to the itinerant
30 vendor for accessing the system. The itinerant vendor shall not
31 complete the sale if the system generates a stop sale alert. Absent
32 negligence, wantonness, recklessness, or deliberate misconduct, any
33 itinerant vendor maintaining the electronic sales tracking system in
34 accordance with this subsection shall not be civilly liable as a result
35 of any act or omission in carrying out the duties required by this
36 subsection and shall be immune from liability to any third party unless
37 he or she has violated any provision of this subsection in relation to
38 a claim brought for such violation.

1 (b) If an itinerant vendor selling a nonprescription drug
2 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
3 salts, isomers, or salts of isomers experiences mechanical or
4 electronic failure of the electronic sales tracking system and is
5 unable to comply with the electronic sales tracking requirement, he or
6 she shall maintain a written log or an alternative electronic
7 recordkeeping mechanism until such time as he or she is able to comply
8 with the electronic sales tracking requirement.

9 (c) An itinerant vendor selling a nonprescription drug containing
10 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
11 isomers, or salts of isomers may seek an exemption from submitting
12 transactions to the electronic sales tracking system in writing to the
13 Washington state attorney general stating the reasons for the
14 exemption. The attorney general may grant an exemption for good cause
15 shown, but in no event shall the exemption exceed one hundred eighty
16 days. An itinerant vendor that receives an exemption shall maintain a
17 logbook in hardcopy form and must require the purchaser to provide the
18 information required under this section before the completion of any
19 sale. The logbook shall be maintained as a record of each sale for
20 inspection by any law enforcement officer or board inspector during
21 normal business hours.

22 **Sec. 3.** RCW 69.43.105 and 2005 c 388 s 2 are each amended to read
23 as follows:

24 (1) For purposes of this section, "traditional Chinese herbal
25 practitioner" means a person who is certified as a diplomate in Chinese
26 herbology from the national certification commission for acupuncture
27 and oriental medicine or who has received a certificate in Chinese
28 herbology from a school accredited by the accreditation council on
29 acupuncture and oriental medicine.

30 (2) A pharmacy licensed by, or shopkeeper or itinerant vendor
31 registered with, the department of health under chapter 18.64 RCW, or
32 an employee thereof, a practitioner as defined in RCW 18.64.011, or a
33 traditional Chinese herbal practitioner may not knowingly sell,
34 transfer, or otherwise furnish to any person a product at retail that
35 he or she knows to contain any detectable quantity of ephedrine,
36 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or

1 salts of isomers, without (~~first~~) obtaining photo identification of
2 the person that shows the date of birth of the person and complying
3 with the requirements of RCW 18.64.044 or 18.64.047.

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

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

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

7 (b) Ease with which ephedrine, pseudoephedrine, or
8 phenylpropanolamine is extracted from the substance and whether it
9 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 (7) 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 (8)(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.

36 (b) 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 is subject to prosecution under subsection (9) of
2 this section if they made a good faith attempt to comply with the
3 requirements of this section by requesting that a customer present
4 photo identification, making a reasonable effort to determine the
5 customer's age.

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

7 **Sec. 4.** RCW 69.43.110 and 2005 c 388 s 4 are each amended to read
8 as follows:

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

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

17 ~~(b)) a ((single package of any product that he or she knows to~~
18 ~~contain)) total of more than ((three)) 3.6 grams of ephedrine,~~

19 pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts
20 of isomers, (~~or a combination of any of these substances)) per sale or~~

21 more than nine grams per thirty days.

22 (2) It is unlawful for a person who is not a manufacturer,
23 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor
24 licensed by or registered with the department of health under chapter
25 18.64 RCW to purchase or acquire(~~(, in any twenty-four hour period,))~~
26 more than the quantities of the substances specified in subsection (1)
27 of this section.

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

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

33 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.10 RCW
34 to read as follows:

35 (1) The attorney general shall implement a real-time electronic
36 sales tracking system to monitor the nonprescription sale of products

1 in this state containing any detectable quantity of ephedrine,
2 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
3 of isomers, provided that the system is available to the state without
4 cost to the state or retailers for accessing the system. The attorney
5 general is authorized to enter into a public-private partnership,
6 through a memorandum of understanding or similar arrangement, to make
7 the system available to retailers and law enforcement in the state.

8 (2) The information contained in the electronic sales tracking
9 system shall be available:

10 (a) To any law enforcement agency or entity as authorized by the
11 attorney general; or

12 (b) Pursuant to a subpoena issued by a grand jury or magistrate.

13 (3) The electronic sales tracking system shall be capable of
14 generating a stop sale alert, which shall be a notification that
15 completion of the sale would result in the seller or purchaser
16 violating the quantity limits set forth in this section. The system
17 shall contain an override function for use by a dispenser of ephedrine,
18 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
19 of isomers, who has a reasonable fear of imminent bodily harm. Each
20 instance in which the override function is utilized shall be logged by
21 the system.

22 (4) The attorney general shall have the authority to adopt rules
23 necessary to implement and enforce the provisions of this section.

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

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