
HOUSE BILL 2454

State of Washington

61st Legislature

2010 Regular Session

By Representatives Campbell, Morrell, McCune, and Chase

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1 AN ACT Relating to ephedrine, pseudoephedrine, and
2 phenylpropranolamine; amending RCW 18.64.044, 18.64.046, 18.64.047,
3 69.43.043, 69.43.090, and 69.50.4013; adding a new section to chapter
4 69.50 RCW; and repealing RCW 69.43.105, 69.43.110, 69.43.120,
5 69.43.130, and 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)~~) must be a licensed pharmacy (~~(may)~~)
15 to purchase 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 with a valid pharmacy license who has purchased
23 products containing any detectable quantity of ephedrine,
24 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
25 salts of isomers, in a suspicious transaction as defined in RCW
26 69.43.035, is subject to the following requirements:

27 (a) The shopkeeper may not sell any quantity of ephedrine,
28 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
29 salts of isomers, if the total monthly sales of these products exceed
30 ten percent of the shopkeeper's total prior monthly sales of
31 nonprescription drugs in March through October. In November through
32 February, 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 twenty percent of the shopkeeper's total prior monthly sales of
36 nonprescription drugs. For purposes of this section, "monthly sales"
37 means total dollars paid by buyers. The board may suspend or revoke
38 the registration of a shopkeeper who violates this subsection.

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

11 **Sec. 2.** RCW 18.64.046 and 2005 c 388 s 6 are each amended to read
12 as follows:

13 (1) The owner of each place of business which sells legend drugs
14 and nonprescription drugs, or nonprescription drugs at wholesale shall
15 pay a license fee to be determined by the secretary, and thereafter, on
16 or before a date to be determined by the secretary as provided in RCW
17 43.70.250 and 43.70.280, a like fee to be determined by the secretary,
18 for which the owner shall receive a license of location from the
19 department, which shall entitle such owner to either sell legend drugs
20 and nonprescription drugs or nonprescription drugs at wholesale at the
21 location specified for the period ending on a date to be determined by
22 the secretary, and each such owner shall at the time of payment of such
23 fee file with the department, on a blank therefor provided, a
24 declaration of ownership and location, which declaration of ownership
25 and location so filed as aforesaid shall be deemed presumptive evidence
26 of the ownership of such place of business mentioned therein. It shall
27 be the duty of the owner to notify immediately the department of any
28 change of location and ownership and to keep the license of location or
29 the renewal thereof properly exhibited in such place of business.

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

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

36 (4) No wholesaler may sell any quantity of drug products containing
37 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,

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

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

20 (6) The requirements for a license apply to all persons, in
21 Washington and outside of Washington, who sell both legend drugs and
22 nonprescription drugs and to those who sell only nonprescription drugs,
23 at wholesale to pharmacies, practitioners, and shopkeepers in
24 Washington.

25 (7)(a) No wholesaler may sell any product containing any detectable
26 quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their
27 salts, isomers, or salts of isomers, to any person in Washington other
28 than a pharmacy licensed under this chapter(~~(, a shopkeeper or
29 itinerant vendor registered under this chapter,~~) or a practitioner as
30 defined in RCW 18.64.011(~~(, or a traditional Chinese herbal
31 practitioner as defined in RCW 69.43.105)~~)).

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

35 **Sec. 3.** RCW 18.64.047 and 2005 c 388 s 7 are each amended to read
36 as follows:

37 (1) Any itinerant vendor or any peddler of any nonprescription drug

1 or preparation for the treatment of disease or injury, shall pay a
2 registration fee determined by the secretary on a date to be determined
3 by the secretary as provided in RCW 43.70.250 and 43.70.280. The
4 department may issue a registration to such vendor on an approved
5 application made to the department.

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

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

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

25 ~~(5) An itinerant vendor who has purchased products containing any~~
26 ~~detectable quantity of ephedrine, pseudoephedrine, or~~
27 ~~phenylpropanolamine, or their salts, isomers, or salts of isomers, in~~
28 ~~a suspicious transaction as defined in RCW 69.43.035, is subject to the~~
29 ~~following requirements:~~

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

1 ~~nonprescription drugs. For purposes of this section, "monthly sales"~~
2 ~~means total dollars paid by buyers. The board may suspend or revoke~~
3 ~~the registration of an itinerant vendor who violates this subsection.~~

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

14 **Sec. 4.** RCW 69.43.043 and 2001 c 96 s 5 are each amended to read
15 as follows:

16 (1) Any manufacturer or wholesaler who sells, transfers, or
17 otherwise furnishes any substance specified in RCW 69.43.010(1) to any
18 person shall maintain a record of each such sale or transfer. The
19 records must contain:

20 (a) The name of the substance;

21 (b) The quantity of the substance sold, transferred, or furnished;

22 (c) The date the substance was sold, transferred, or furnished;

23 (d) The name and address of the person buying or receiving the
24 substance; and

25 (e) The method of and amount of payment for the substance.

26 (2) The records of sales and transfers required by this section
27 shall be available for inspection by the state board of pharmacy
28 ~~((and)),~~ its authorized representatives, and law enforcement agencies,
29 and shall be maintained for two years.

30 (3) A violation of this section is a gross misdemeanor.

31 **Sec. 5.** RCW 69.43.090 and 2001 c 96 s 8 are each amended to read
32 as follows:

33 (1) Any manufacturer, wholesaler, retailer, or other person who
34 sells, transfers, or otherwise furnishes any substance specified in RCW
35 69.43.010 to any person or who receives from a source outside of the
36 state any substance specified in RCW 69.43.010 shall obtain a permit

1 for the conduct of that business from the state board of pharmacy.
2 (~~However, a permit shall not be required of any manufacturer,~~
3 ~~wholesaler, retailer, or other person for the sale, transfer,~~
4 ~~furnishing, or receipt of any drug that contains ephedrine,~~
5 ~~phenylpropanolamine, or pseudoephedrine, or of any cosmetic that~~
6 ~~contains a substance specified in RCW 69.43.010(1), if such drug or~~
7 ~~cosmetic is lawfully sold, transferred, or furnished over the counter~~
8 ~~without a prescription or by a prescription under chapter 69.04 or~~
9 ~~69.41 RCW.))~~

10 (2) Applications for permits shall be filed with the department in
11 writing and signed by the applicant, and shall set forth the name of
12 the applicant, the business in which the applicant is engaged, the
13 business address of the applicant, and a full description of any
14 substance sold, transferred, or otherwise furnished, or received.

15 (3) The board may grant permits on forms prescribed by it. The
16 permits shall be effective for not more than one year from the date of
17 issuance.

18 (4) Each applicant shall pay at the time of filing an application
19 for a permit a fee determined by the department.

20 (5) A permit granted under this chapter may be renewed on a date to
21 be determined by the board, and annually thereafter, upon the filing of
22 a renewal application and the payment of a permit renewal fee
23 determined by the department.

24 (6) Permit fees charged by the department shall not exceed the
25 costs incurred by the department in administering this chapter.

26 (7) Selling, transferring, or otherwise furnishing, or receiving
27 any substance specified in RCW 69.43.010 without a required permit, is
28 a gross misdemeanor.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.50 RCW
30 to read as follows:

31 (1) The board shall adopt rules to take effect on January 1, 2011,
32 to classify ephedrine, pseudoephedrine, and phenylpropanolamine as
33 legend drugs and Schedule III controlled substances.

34 (2)(a) This section does not apply to products that the board, upon
35 application of a manufacturer, exempts by rule because the product is
36 formulated to effectively prevent conversion of the active ingredient

1 into methamphetamine or its salts or precursors. The board shall
2 collaborate with the forensic laboratory services bureau of the
3 Washington state patrol during the rule-making process.

4 (b) Upon notification of the forensic laboratory services bureau of
5 the Washington state patrol that it has probable cause to believe that
6 a product exempted under (a) of this subsection does not effectively
7 prevent conversion of the active ingredient into methamphetamine or its
8 salts or precursors, the board may issue a summary suspension of the
9 exemption for the product pending the completion of the rule-making
10 process to permanently revoke the exemption.

11 (3) Records of transactions involving products containing
12 ephedrine, pseudoephedrine, or phenylpropanolamine are subject to
13 inspection by the board and law enforcement agencies. A person
14 required to make or maintain records of transactions involving products
15 containing ephedrine, pseudoephedrine, or phenylpropanolamine shall
16 forward the records to a law enforcement agency if directed to do so by
17 that agency.

18 **Sec. 7.** RCW 69.50.4013 and 2003 c 53 s 334 are each amended to
19 read as follows:

20 (1) It is unlawful for any person to possess a controlled substance
21 unless the substance was obtained directly from, or pursuant to, a
22 valid prescription or order of a practitioner while acting in the
23 course of his or her professional practice, or except as otherwise
24 authorized by this chapter.

25 (2) It is an affirmative defense that the defendant must prove by
26 a preponderance of the evidence to a charge of violating subsection (1)
27 of this section by unlawfully possessing ephedrine, pseudoephedrine, or
28 phenylpropanolamine that the person:

29 (a) Obtained the ephedrine, pseudoephedrine, or phenylpropanolamine
30 lawfully prior to January 1, 2011;

31 (b) Possessed no more than six grams of ephedrine, pseudoephedrine,
32 or phenylpropanolamine, the salts, isomers, or salts of isomers of
33 ephedrine, pseudoephedrine, or phenylpropanolamine, or a combination of
34 any of these substances; and

35 (c) Possessed the ephedrine, pseudoephedrine, or
36 phenylpropanolamine under circumstances that are consistent with
37 typical medicinal or household use, as indicated by factors that

1 include, but are not limited to, storage location, purchase date,
2 possession of the products in a variety of strengths, brands, types, or
3 purposes, and expiration dates.

4 (3) Except as provided in RCW 69.50.4014, any person who violates
5 this section is guilty of a class C felony punishable under chapter
6 9A.20 RCW.

7 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
8 repealed:

9 (1) RCW 69.43.105 (Ephedrine, pseudoephedrine,
10 phenylpropanolamine--Sales restrictions--Exceptions--Penalty) and 2005
11 c 388 s 2;

12 (2) RCW 69.43.110 (Ephedrine, pseudoephedrine,
13 phenylpropanolamine--Sales restrictions--Penalty) and 2005 c 388 s 4,
14 2004 c 52 s 5, & 2001 c 96 s 9;

15 (3) RCW 69.43.120 (Ephedrine, pseudoephedrine,
16 phenylpropanolamine--Possession of more than fifteen grams--Penalty--
17 Exceptions) and 2001 c 96 s 10;

18 (4) RCW 69.43.130 (Exemptions--Pediatric products--Products
19 exempted by the state board of pharmacy) and 2004 c 52 s 7 & 2001 c 96
20 s 11; and

21 (5) RCW 69.43.170 (Ephedrine, pseudoephedrine,
22 phenylpropanolamine--Pilot project to record retail transactions--
23 Penalty) and 2005 c 388 s 8.

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