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HOUSE BILL 2961

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Campbell, Hurst, Morrell, Kelley, and Ormsby

Read first time 01/19/10. Referred to Committee on Health Care & Wellness.

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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