

HOUSE BILL REPORT

ESHB 1370

As Passed House:

March 9, 2001

Title: An act relating to precursor drugs.

Brief Description: Restricting the sale of ephedrine, pseudoephedrine, or phenylpropanolamine.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Jackley, Morell, Eickmeyer, Bush, Benson, Rockefeller, Schindler, Conway, Hurst, Mulliken and Campbell; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/9/01, 2/14/01 [DPS].

Floor Activity:

Passed House: 3/9/01, 93-0.

Brief Summary of Engrossed Substitute Bill

- Provides reporting and record keeping requirements for the sale of precursor drugs.
- Failure to maintain records for the sale of precursor drugs is a gross misdemeanor.
- Selling or possessing certain amounts of ephedrine, pseudoephedrine, or phenylpropanolamine is a gross misdemeanor.
- Authorizes the State Board of Pharmacy to impose civil penalties up to \$10,000 for violations of precursor drug laws.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

Staff: Yvonne Walker (786-7841).

Background:

Precursor drugs are substances that can be used to manufacture controlled substances. Generally, any person, manufacturer or retailer who sells, transfers, or furnishes precursor drugs must require proper identification from the purchaser and submit a report of such transactions to the State Board of Pharmacy. Exceptions to the reporting requirement are provided for pharmacists providing drugs for a prescription and for physicians furnishing a substance to a patient. Over the counter products containing precursor compounds are also not required to be reported. Any person failing to require proper identification for the sale of such substances is guilty of a misdemeanor. A misdemeanor is punishable by a maximum term of 90 days in jail, a \$1,000 fine, or both.

Any manufacturer or wholesaler who sells, transfers, or furnishes any precursor drug to a person or who receives a precursor drug from a source outside of Washington must obtain a permit for the conduct of such business from the State Board of Pharmacy. Failure to obtain a permit is a gross misdemeanor. In addition, any wholesaler or manufacturer who receives precursor drugs from outside the state, must submit a report of such transactions to the State Board of Pharmacy. Failure to report such transactions is a gross misdemeanor. A gross misdemeanor is punishable by a maximum term of one year in jail, a \$5,000 fine, or both.

Furthermore, any person who sells, transfers, or furnishes a precursor drug, with knowledge or intent that it will be used to unlawfully produce a controlled substance, is guilty of an unranked B felony. Receipt of these drugs with intent to unlawfully manufacture a controlled substance is also an unranked B felony. In cases where felonies are unranked on the sentencing grid, courts are required to impose a determinate sentence which may include not more than one year of confinement and may also include community service, legal financial obligations, or a term of community supervision not to exceed one year or a fine.

Precursor drugs include such substances as ephedrine, pseudoephedrine, or phenylpropanolamine.

Summary of Bill:

Any person who transfers or receives precursors must obtain a permit from the State Board of Pharmacy for the conduct of that business. In addition, all sales whether or not the buyer is within the state and all purchases of precursor drugs from out-of-state sources must be reported to the State Board of Pharmacy.

Manufacturers and wholesalers are required to report, in writing, suspicious transactions

of precursor drugs to the State Board of Pharmacy. Failure to submit a report is a gross misdemeanor. "Suspicious transactions" are sales under circumstances leading a reasonable person to believe the substance is likely to be used for making a controlled substance, based on the following factors: 1) the amount involved; 2) the payment method (cash or money orders exceeding \$200); 3) the delivery method; and 4) any past dealings with the buyer.

The State Board of Pharmacy must adopt a rule establishing criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in Appendix A of the report to the United States Attorney General by the Suspicious Orders Task Force under the Federal Comprehensive Methamphetamine Control Act of 1996.

Manufacturers and wholesalers must maintain records of precursor drug sales and make them available for the State Board of Pharmacy inspection for two years. Anyone subject to reporting or record keeping requirements for precursor drugs may meet those requirements by using computer readable data or copies of federally required reports containing the same information. All records must contain the following items:

- The name of the substance;
- The quantity of the substance sold, transferred, or furnished;
- The date the substance was sold, transferred, or furnished;
- The name and address of the person buying or receiving the substance; and
- The method of and amount of payment for the substance.

It is a gross misdemeanor offense for a pharmacy, shopkeeper, or vendor licensed or registered with the Department of Health, to knowingly sell or furnish, in a single transaction more than three packages of ephedrine, pseudoephedrine, or phenylpropanolamine, or their compounds; or a single package containing three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, or their compounds, or any combination of these substances.

It is a gross misdemeanor offense to possess more than 15 grams of ephedrine, pseudoephedrine, phenylpropanolamine, or their compounds except for pharmacists, practitioners, pharmacies, manufacturers, wholesalers, or any person whose course of business is selling, transporting, or storing the precursor items for a pharmacy, physician, manufacturer or wholesaler. These restrictions do not apply to:

- Persons who have the drugs in their home and they are being used consistently with normal medical or household use;
- Pediatric products primarily intended for administration to children under 12 years of age, according to label instructions, either: (a) in a solid dosage form whose individual dosage units do not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in a liquid form whose recommended dosage, according to label instructions, does not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliter of liquid product;
- Pediatric liquid products primarily intended for administration to children under 2

years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce; or

- Products that the State Board of Pharmacy, upon application of a manufacturer, exempts because the product has been formulated in such a way as to effectively prevent their conversion to methamphetamine.

It is a gross misdemeanor for any person, who is not a manufacturer, wholesaler, pharmacy, or practitioner to purchase, in any 24-hour period, more than three packages of ephedrine, pseudoephedrine, or phenylpropanolamine or a single package containing three grams or more of the substance.

The State Board of Pharmacy may impose a civil penalty up to \$10,000 for violations of precursor drug laws. In the case of a continuing violation, every day the violation continues shall be considered a separate violation. However, the board may waive the civil penalties and licensing sanctions based on an employer's diligence and good faith efforts in trying to prevent violations by employees. In making such a determination, the State Board of Pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish precursor substances.

In addition, retailers are required to take either of two measures to prevent the sale and purchase of prohibited quantities of ephedrine products: (1) program scanning and related equipment to prevent such purchases; or (2) post one or more signs on the premises to alert customers and employees to the prohibitions. The Department of Health must prepare language for the signs to alert customers and employees to the prohibitions. The language must be made available to all retailers for their voluntary use within their place of business.

The precursor drug laws are applicable throughout Washington and in all counties, cities, code cities, and towns. A county, city, code city, or town may not adopt or enforce any ordinance pertaining to the precursor drug laws which prohibits conduct that is not prohibited under state statute, or define violations or penalties different from those provided under state law. A county, city, code city, or town is not precluded from revoking, canceling, suspending, or limiting a business or professional license it has issued for violation of state law.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Washington is the number one supplier of methamphetamine drugs to other states throughout the United States. Methamphetamine is not only dangerous to

those who use it, but also to children, families, and the communities where it is being manufactured. The Governor has requested \$12 million dollars in this year's budget for education, prevention, treatment, public health, law enforcement, and clean-up of methamphetamine drugs.

The language in the bill that protects retailers who are trying their best to abide by the law is critical. That section provides a strong incentive for retailers to train and educate their employees regarding the dangers and criminal penalties of using or selling methamphetamine precursors. In addition, the language in the bill that requires the Department of Health to design a standardize sign for retailers to voluntarily display in their stores is also important. This gives retailers an option as to whether they would like to hang the signs up in their stores. Furthermore, the language in the substitute bill that preempts local ordinances not consistent with state law is also essential.

This bill will make it harder for methamphetamine manufacturers to assemble the common methamphetamine precursor ingredients of ephedrine, pseudoephedrine, and phenylpropanolamine needed to manufacture methamphetamine. In addition, it will give the State Board of Pharmacy a tool to penalize those suppliers who sell methamphetamine precursor drugs illegally.

(With concerns) There are concerns that although an employee may have acted in good faith to try to prevent the sale of a precursor drug, a manager or other person in a supervisory capacity may force the employee to sell the item without regard to the law. A provision should be added to the bill that does not penalize an employee who is able to show that he or she acted in good faith to try to prevent the sale of the drug, and the sale occurred despite the employee's exercise to due diligence.

Testimony Against: None.

Testified: (In support) Representative Jackley, co-prime sponsor; Representative Morell, co-prime sponsor; T. K. Bentler, Washington Association of Neighborhood Stores; Dick Van Wagenen, Governor's Policy Office; Lis Merten, National Association of Chain Drug Stores; Dave Perry, Pierce County Sheriff's Department; Larry Erickson, Washington Association of Sheriffs and Police Chiefs; Don Williams, Washington Department of Health; and Nancy Bukar, Consumer House Care Products Association.

(With concerns) Joe Daniels, United Food and Commercial Workers District Council.