

HOUSE BILL REPORT

HB 2961

As Reported by House Committee On:

Health Care & Wellness
Health & Human Services Appropriations

Title: An act relating to establishing a statewide electronic tracking system for the nonprescription sales of ephedrine, pseudoephedrine, and phenylpropanolamine.

Brief Description: Establishing a statewide electronic tracking system for the nonprescription sales of ephedrine, pseudoephedrine, and phenylpropanolamine.

Sponsors: Representatives Campbell, Hurst, Morrell, Kelley and Ormsby.

Brief History:

Committee Activity:

Health Care & Wellness: 1/26/10, 1/29/10 [DPS];

Health & Human Services Appropriations: 2/4/10, 2/5/10 [DP2S(w/o sub HCW)].

Brief Summary of Second Substitute Bill

- Establishes new restrictions on the sale of methamphetamine precursors.
- Establishes a statewide electronic tracking system for non-prescription sales of methamphetamine precursors.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.
Signed by 10 members: Representatives Cody, Chair; Driscoll, Vice Chair; Campbell, Clibborn, Green, Herrera, Kelley, Moeller, Morrell and Pedersen.

Minority Report: Without recommendation. Signed by 3 members: Representatives Erickson, Ranking Minority Member; Bailey and Hinkle.

Staff: Jim Morishima (786-7191).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Restrictions on the Sale of Methamphetamine Precursors.

Methamphetamine is a highly addictive stimulant that affects the central nervous system. Certain drugs that may be purchased without prescription, so-called "methamphetamine precursors," may be used to manufacture methamphetamine illegally; e.g., ephedrine, pseudoephedrine, or phenylpropanolamine. There are therefore several restrictions on the purchase and sale of methamphetamine precursors. These restrictions include:

- a ban on selling methamphetamine precursors to persons under the age of 18;
- a ban on selling methamphetamine precursors unless the purchaser presents photographic identification;
- a requirement that products containing methamphetamine precursors be kept in a central location not accessible to customers without assistance; and
- a cap on a seller's total sales of methamphetamine precursors if the seller previously acquired methamphetamine precursors in a suspicious transaction. The cap varies depending on the time of year. From March through October, the cap is 10 percent of the merchant's monthly sales of non-prescription drugs. From November through February, the cap increases to 20 percent of the merchant's monthly sales of non-prescription drugs.

In addition, there are federal and state restrictions on the amount of methamphetamine precursors that may be sold to individual customers. The federal Combat Methamphetamine Epidemic Act of 2005 (CMEA) imposes a daily sales limit of 3.6 grams per purchaser and prohibits a purchaser from buying more than nine grams during a 30 day period. In Washington, the daily sales limit is two packages with no more than three grams per package; i.e., six grams per day. A person may not possess more than 15 grams of methamphetamine precursors at a time.

Electronically Tracking Methamphetamine Precursor Sales.

In 2005 the Legislature created a pilot project to determine the efficacy of requiring merchants to maintain electronic logs of methamphetamine precursor purchases. The Board of Pharmacy was required to convene a work group to evaluate the data collected during the pilot project. The work group's report, issued in 2007, found that retail transaction logs are an effective means of restricting access to methamphetamine precursors and recommended an electronic point-of-sale data collection system for real-time transmission of information.

Summary of Substitute Bill:

Restrictions on the Sale of Methamphetamine Precursors.

Methamphetamine precursors must be placed either behind a counter where the public is not permitted or in a locked display case where customers must ask employees for assistance to gain access. A customer must electronically or manually sign a record of any transaction in which he or she purchased methamphetamine precursors. The record must contain the name and address of the purchaser, the date and time of the sale, the name and the initials of the

person conducting the transaction, the name of the product sold, and the total quantity in grams of the precursors being sold.

The daily sales limit for methamphetamine precursors is changed to reflect federal law. A merchant may not sell more than 3.6 grams of methamphetamine precursors to a purchaser in a single day or more than nine grams per purchaser in a 30-day period. Likewise, a purchaser may not buy more than 3.6 grams of methamphetamine precursors in a single day or more than nine grams in a 30-day period.

Electronically Tracking Methamphetamine Precursor Sales.

The Board of Pharmacy (Board) must implement a real-time electronic sales tracking system to monitor the non-prescription sale of products containing methamphetamine precursors. The system must be available without cost for accessing the system to the state or retailers. The Attorney General may enter into a public-private partnership to make the system available.

The electronic sales tracking system must contain the following elements:

- the capability to generate a stop sale alert, which is a notification that completion of the sale would result in the seller or purchaser violating the quantity limits for methamphetamine precursors; and
- an override function for use by a dispenser of methamphetamine precursors who has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized must be logged by the system.

The records in the electronic tracking system are confidential and only for the use of the seller, except that:

- the records must be provided to a court when lawfully required;
- the records must be open to inspection by the Board;
- the records may be used to track whether a person has violated the methamphetamine precursor purchase limits or to generate a stop sale alert; and
- the records must be available to any general authority Washington peace officer or a federal law enforcement officer.

Beginning six months after the electronic sales tracking system is available, a seller (i.e., a pharmacy, shopkeeper, or itinerant vendor) of non-prescription methamphetamine precursors must submit the required information to the system before completing a sale. The seller may not complete the sale if the system generates a stop sale alert, unless he or she is in reasonable fear of imminent bodily harm. If the seller is unable to use the system due to a mechanical or electronic failure, he or she must maintain a written log or alternative electronic recordkeeping mechanism until the mechanical or electronic failure is resolved.

A seller's use of the electronic sales tracking system must be without cost for accessing the system. A seller may withdraw from participation in the system if the system is no longer being furnished without cost for accessing the system. If the seller withdraws, he or she must maintain alternate records. "Cost for accessing the system" is defined to include costs relating to software, training, technical support, and access to the system. "Cost for

"accessing the system" does not include costs relating to internet access, hardware, or other equipment.

A seller participating in the system is not liable for civil damages arising from:

- any act or omission connected with the seller's participation, except for acts or omissions constituting gross negligence or willful or wanton misconduct; and
- a data breach proximately caused by a failure on the part of the tracking system to take reasonable care through the use of standard levels of encryption.

A seller may submit a written request to the Board for an exemption to the electronic sales tracking system. The request must state the reasons for the exemption. The Board may grant the exemption for good cause, but in no case may the exemption exceed 180 days. If the exemption is granted, the seller must maintain a logbook in hardcopy form and must require the purchaser to submit the same information prior to the completion of the sale as would be required if the seller was participating in the tracking system. The logbook must be available for inspection by law enforcement or the Board during normal business hours.

Substitute Bill Compared to Original Bill:

The substitute bill:

- gives the responsibility of implementing the tracking system to the Board, instead of the Attorney General;
- allows sellers to end participation in the tracking system if there are costs for accessing the system;
- defines costs for accessing the system as costs relating to software, training, technical support, and access to the system. The term does not include costs relating to internet access, hardware, or other equipment;
- restores provisions (eliminated in the original bill) that impose a sales cap on merchants who have engaged in suspicious transactions in the past;
- restores provisions (amended in the original bill) that impose recordkeeping requirements on merchants who have engaged in suspicious transactions in the past;
- changes the sales and purchase limits in the original bill to be consistent with federal law: the per sale limit is changed to 3.6 grams per 24-hour period instead of per sale and applies the nine gram limit per 30-day period to purchasers instead of sellers;
- changes the provisions in the original bill that provide immunity to sellers participating in the system: sellers are immune from civil liability for participating in the tracking system, except for acts or omission that constitute gross negligence or willful or wanton misconduct and are immune for damages arising from a data breach (the original bill provided civil immunity absent negligence, wantonness, recklessness, or deliberate misconduct, and provided immunity from actions brought by third parties in relation to violations of the tracking system requirements unless the seller violated the requirements);
- allows purchasers to sign the sales log electronically or manually;
- requires pharmacies to participate in the electronic tracking system; and
- provides that the records in the tracking system are confidential and only for the use of the seller except that:
 - the records must be provided in court when lawfully required;
 - the records must be open to inspection by the Board of Pharmacy;

- the records may be used to track whether a person has violated purchase limits and to generate a stop sale alert; and
 - the records must be available to any general authority peace officer or a federal law enforcement officer.
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Appropriation: None.

Fiscal Note: Original fiscal note is available. Requested fiscal note on substitute on February 2, 2010.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is the culmination of a process that began in 2005 with the pilot program to log methamphetamine precursor purchases. This bill will prevent "smurfing" and will reduce the number of methamphetamine labs in our state by stopping them before they can happen. This bill also preserves access to these products for legitimate customers who need these products and will make the process of purchasing the products easier. These data are already being collected under current law. This bill just makes the collection process more efficient. Only law enforcement will have access to the data. This system is already up and running in other states. This bill will be made available without cost to the state or to retailers.

(In support with concerns) This bill is a move in the right direction. Sellers of methamphetamine precursors are concerned about the technical aspects associated with implementing the system. Assistance with these technical aspects will help smaller retailers get the system put in place quickly.

(Opposed) This system is invasive of people's privacy. The electronic system is more invasive than the written logs required by the pilot program. Methamphetamine use has been declining in this state. A better use of these resources would be for treatment and prevention.

Persons Testifying: (In support) Representative Campbell, prime sponsor; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Allen Segal, Consumer Health Products Association; Mike Harum, Chelan County Sheriff; Stu Halsan, Rite Aid Corporation; Steve Jewell, Safe Streets Campaign in Pierce County; Sarah Kluesner, Greater Pierce County Community Network; and Barbara Dolan, Community Action Team.

(In support with concerns) Lis Houchen, National Association of Chain Drug Stores; and Carolyn Logue, Washington Food Industry.

(Opposed) Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Health Care & Wellness. Signed by 13 members: Representatives Pettigrew, Chair; Seaquist, Vice Chair; Alexander, Assistant Ranking Minority Member; Appleton, Cody, Dickerson, Fagan, Johnson, Miloscia, Morrell, O'Brien, Roberts and Wood.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Walsh.

Staff: Chris Blake (786-7392).

Summary of Recommendation of Committee On Health & Human Services Appropriations Compared to Recommendation of Committee On Health Care & Wellness:

The second substitute bill prohibits the electronic tracking system from being available prior to July 1, 2011. Further specificity is provided regarding the definition of "cost for accessing the system" which does not include costs relating to Internet access, optional hardware, and other equipment. Data in the electronic tracking system are exempt from public disclosure.

Appropriation: None.

Fiscal Note: Requested on February 2, 2010.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Methamphetamine use continues to be a major problem in Washington communities. The weakness of the current system in Washington for addressing methamphetamine production is the written log component. Having an electronic system will fight the practice of "smurfing" - going from store to store and purchasing pseudoephedrine for methamphetamine production. The electronic system would be easier for consumers and would help support their privacy. Manufacturers have come forward to provide this without taxpayer expense. Pilot projects have shown that electronic logs work very well, but there has been no money in the system. This is an alternative to scheduling pseudoephedrine as a drug requiring a prescription. This will be less intrusive to consumers and will make detecting smurfing easier for law enforcement by tracking sales in real time. This has already been implemented in other states and is working well.

(In support with concerns) There should not be any fee increase to pharmacists for implementing the program and for rulemaking. There should be an exemption to the Open Public Records Act for the information. The start date should be postponed until July 1, 2011. Many smaller stores don't have computers at the check out area which will result in costs.

(Opposed) None

Persons Testifying: (In support) Representative Campbell, prime sponsor; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Scott Sigmon, Consumer Health Productions Association; and Steve Jewell, Safe Streets Campaign Pierce County.

(In support with concerns) Lis Houchen, Director, National Association of Chain Drug Stores; and Carolyn Logue, Washington Food Industries.

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.