

SENATE BILL REPORT

ESHB 2266

As Reported By Senate Committee On:
Judiciary, April 1, 2005
Ways & Means, April 4, 2005

Title: An act relating to the sale of ephedrine, pseudoephedrine, and phenylpropanolamine.

Brief Description: Concerning access to certain precursor drugs.

Sponsors: House Committee on Health Care (originally sponsored by Representatives Campbell, Morrell, Green, Moeller, Lantz, Cody, McCune, Haler, Lovick, McDonald and Ahern).

Brief History: Passed House: 3/14/05, 79-17.

Committee Activity: Judiciary: 3/29/05, 4/1/05 [DPA, w/oRec].
Ways & Means: 4/4/05 [DPA, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Hargrove, Rasmussen and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senators Johnson, Ranking Minority Member; Carrell and Esser.

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Zarelli, Ranking Minority Member; Brandland, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Thibaudeau.

Minority Report: That it be referred without recommendation.

Signed by Senator Pflug.

Staff: Chelsea Buchanan (786-7446)

Background: Precursor drugs are substances that can be used for the illicit manufacture of amphetamines and other synthetic drugs. Any manufacturer, wholesaler, retailer, or other person must require proper identification from the purchaser of precursor drugs, keep records of all transfers, and report to the board of pharmacy (Board) on a schedule. Sales, transfers, and receipt of drugs containing ephedrine, phenylpropanolamine, and pseudoephedrine are exempt from the reporting requirements.

It is a gross misdemeanor to sell at retail more than three packages of products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or a single package containing more than three grams in a single transaction. It is a gross misdemeanor to purchase more than three packages of products containing these precursor drugs, or a single package containing more than three grams in a 24-hour period. It is also a gross misdemeanor to possess more than 15 grams of these precursor drugs unless the compounds are stored in a home or residence under circumstances consistent with legitimate uses. The Board may impose a civil penalty up to \$10,000 for violations of precursor drug laws.

Summary of Amended Bill: For products containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers:

- pharmacies, registered shopkeepers, and itinerant vendors must obtain photo identification from customers prior to selling, transferring, or furnishing them with these products;
- customers must be over 18 years old to purchase these products; and
- the products must be kept in a location not accessible by customers without the assistance of an employee of the merchant.

It is a gross misdemeanor for a pharmacy, registered shopkeeper, or itinerant vendor to violate the identification or access restrictions. It is a defense to a violation of these restrictions that the entity or its employees made a good faith attempt to comply. An employer may not retaliate against an employee who made a good faith attempt to comply with the restrictions.

The Washington Association of Sheriffs and Police Chiefs or the Washington State Patrol may petition the State Board of Pharmacy (State Board) to establish restrictions for products containing *any* amount of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers. The State Board is authorized to adopt restrictions to prevent access to products and emergency rules if necessary to protect public health and safety. A manufacturer of a drug product may petition the State Board for an exemption, and the burden of proof is upon the petitioner.

Amended Bill Compared to Original Bill: The amended bill applies the age, photo identification, and location restrictions only products where the sole active ingredient is a precursor drug, rather than any amount. All requirements for keeping logs are removed.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Testimony For (Judiciary): *Bill as Referred:* Past efforts have worked, but they have not stemmed the tide of methamphetamine labs in Washington. Drugs with single active ingredients are the easiest and most efficient to convert, so they should be in the pharmacy. The logs are proving their worth in Oklahoma, where these restrictions are already in place. People are locking themselves in their own homes in fear of the methamphetamine lab operators in their own neighborhoods. This is also an environmental issue. Pierce County may go ahead and try to restrict these substances to sale in pharmacies. Without logs,

methamphetamine manufacturers will continue to use runners to purchase their precursor drugs. *Amendment S-6828.2*: All of these substances are used to manufacture methamphetamine, so they should all be moved to a location accessible only to store employees. Alternatives to logs will enable store owners to select the method of record keeping most feasible in their situation. This will deal with the problem in a meaningful way without burdening law abiding sellers and purchasers. Fred Meyer is moving all of these drugs behind the counter today.

Testimony Against (Judiciary): These rules will increase costs and decrease already thin profit margins. Not all grocers in the state have the capability to keep logs or maintain video records. The USDEA data indicates that there are fewer incidents of illicit use of multi-ingredient compounds. Responsible manufacturers are taking steps to minimize the misuse of their products. We already regulate these drugs more than most other states and the laws we have are working. Everyone wants to curtail the drug problem. Pharmacists should be used to fill prescriptions. This is an expensive way to provide a deterrent. This will tend to intimidate legitimate users.

Who Testified (Judiciary): PRO: Representative Campbell. Prime sponsor; Representative Morrell; Dick Muri, Pierce County Council; Barb Dolan, Community Action Team; Mark Lindquist, Pierce County Prosecuting Attorney; Gary Edwards, Thurston County Sheriff, Helen Myrick, Greater Pierce County Community Network.

CON: Lis Houchen, National Association of Chain Drug Stores; Bob Gee, Washington Food Industry Association; Dr John Clayton, Schering Plough Pharmaceutical; Susie Tracy, Schering Plough Pharmaceutical.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Mark Johnson, Washington Retail Association.

Testimony For (Ways & Means): Washington State is the third worst state nationally for meth labs, and if Pierce County counted as a state it would be eighth or ninth worst. The bill as referred by Judiciary allows retailers to use the method most feasible for them—either logs or video/electronic recordings. This shouldn't be such a huge inconvenience to retailers or to customers. The precursor drugs are cold medicine, not heart medicine, and many stores already have video equipment due to their own insurance requirements. Fred Meyer is already voluntarily doing some of the provisions in this bill. The logs are proving their worth in Oklahoma, where these restrictions are already in place. Using logs will discourage serial purchasers, who are much harder to stop than importers of drugs in trucks. This bill isn't premature; previous legislation dealing with "suspicious transactions" will be difficult to enforce. \$50 million per year is spent in Washington State to fight meth and deal with meth-related problems. Pierce County also spends millions fighting meth. Children exposed to meth or drug-involved parents are the ones making the sacrifice; adults should be willing to make the sacrifice instead and pass this bill.

Testimony Against (Ways & Means): The bill as referred by Judiciary creates more than an inconvenience on an already burdened industry. Retailers would like the requirements for logs or recording removed. The requirement to keep logs for two years is especially burdensome. Convenience stores mostly sell single doses of this kind of medicine; are they supposed to log even these? It's okay to keep a drug whose single active ingredient is

pseudoephedrine, etc. behind the counter, as these drugs are most easily and cheaply converted to meth. However, the requirement to keep compounded drugs behind the counter is overly restrictive, and these drugs are less likely to be used by meth manufacturers as they are more expensive and less productive.

Who Testified (Ways & Means): PRO: Representative Campbell, prime sponsor; Senator Kastama; Barb Dolan and Kelly Coughlin, Community Action Team.

CON: Mark Johnson, Washington Retail Association; Bob Gee, Washington Food Industry Association; Susie Tracy, Schering Plough Pharmaceutical; T.K. Bentler, Washington Association of Neighborhood Stores.