

SHB 2844 - H AMD 810

By Representative Lovick

ADOPTED 02/12/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that quantities of
4 ephedrine, pseudoephedrine, and phenylpropanolamine continue to be sold
5 at the wholesale and retail levels far in excess of legitimate consumer
6 needs. The excess quantities being sold are most likely used in the
7 criminal manufacture of methamphetamine. It is therefore necessary for
8 the legislature to further regulate the sales of these drugs, including
9 sales from out-of-state sources, in order to reduce the threat that
10 methamphetamine presents to the people of the state.

11 **Sec. 2.** RCW 18.64.044 and 1989 1st ex.s. c 9 s 401 and 1989 c 352
12 s 1 are each reenacted and amended to read as follows:

13 (1) A shopkeeper registered as provided in this section may sell
14 nonprescription drugs, if such drugs are sold in the original package
15 of the manufacturer.

16 (2) Every shopkeeper not a licensed pharmacist, desiring to secure
17 the benefits and privileges of this section, is hereby required to
18 register as a shopkeeper through the master license system, and he or
19 she shall pay the fee determined by the secretary for registration, and
20 on a date to be determined by the secretary thereafter the fee
21 determined by the secretary for renewal of the registration; and shall
22 at all times keep said registration or the current renewal thereof
23 conspicuously exposed in the ((shop)) location to which it applies. In
24 event such shopkeeper's registration is not renewed by the master
25 license expiration date, no renewal or new registration shall be issued
26 except upon payment of the registration renewal fee and the master
27 license delinquency fee under chapter 19.02 RCW. This registration fee
28 shall not authorize the sale of legend drugs or controlled substances.

1 (3) The registration fees determined by the secretary under
2 subsection (2) of this section shall not exceed the cost of registering
3 the shopkeeper.

4 (4) Any shopkeeper who shall vend or sell, or offer to sell to the
5 public any such nonprescription drug or preparation without having
6 registered to do so as provided in this section, shall be guilty of a
7 misdemeanor and each sale or offer to sell shall constitute a separate
8 offense.

9 (5) A shopkeeper who is not a licensed pharmacy may purchase
10 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
11 isomers, or salts of isomers, only from a wholesaler licensed by the
12 department under RCW 18.64.046 or from a manufacturer licensed by the
13 department under RCW 18.64.045. A person violating this subsection is
14 guilty of a gross misdemeanor, and each purchase in violation of this
15 subsection constitutes a separate offense.

16 (6) No shopkeeper who is not a licensed pharmacy may sell any
17 quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or
18 their salts, isomers, or salts of isomers, if the total monthly sales
19 of these products exceed ten percent of the shopkeeper's total prior
20 monthly sales of nonprescription drugs in March through October. In
21 November through February, no shopkeeper may sell any quantity of
22 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
23 isomers, or salts of isomers, if the total monthly sales of these
24 products exceed twenty percent of the shopkeeper's total prior monthly
25 sales of nonprescription drugs. For purposes of this section, monthly
26 sales means total dollars paid by buyers. The board may suspend or
27 revoke the registration of a shopkeeper who violates this subsection.

28 (7) Shopkeepers who are not licensed pharmacies shall maintain
29 inventory records of the receipt and disposition of nonprescription
30 drugs, utilizing existing inventory controls if an auditor or
31 investigator can determine compliance with subsection (6) of this
32 section, and otherwise in the form and manner required by the board.
33 The records shall be available for inspection by the board or any law
34 enforcement agency and shall be maintained for two years. The board
35 may suspend or revoke the registration of a shopkeeper who violates
36 this subsection. For purposes of this subsection, "disposition" means
37 the return of product to the wholesaler or distributor.

1 **Sec. 3.** RCW 18.64.046 and 2003 c 53 s 133 are each amended to read
2 as follows:

3 (1) The owner of each place of business which sells legend drugs
4 and nonprescription drugs, or nonprescription drugs at wholesale shall
5 pay a license fee to be determined by the secretary, and thereafter, on
6 or before a date to be determined by the secretary as provided in RCW
7 43.70.250 and 43.70.280, a like fee to be determined by the secretary,
8 for which the owner shall receive a license of location from the
9 department, which shall entitle such owner to either sell legend drugs
10 and nonprescription drugs or nonprescription drugs at wholesale at the
11 location specified for the period ending on a date to be determined by
12 the secretary, and each such owner shall at the time of payment of such
13 fee file with the department, on a blank therefor provided, a
14 declaration of ownership and location, which declaration of ownership
15 and location so filed as aforesaid shall be deemed presumptive evidence
16 of the ownership of such place of business mentioned therein. It shall
17 be the duty of the owner to notify immediately the department of any
18 change of location and ownership and to keep the license of location or
19 the renewal thereof properly exhibited in such place of business.

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

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

26 (4) No wholesaler may sell any quantity of drug products containing
27 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
28 isomers, or salts of isomers, if the total monthly sales of these
29 products to persons within the state of Washington exceed five percent
30 of the wholesaler's total prior monthly sales of nonprescription drugs
31 to persons within the state in March through October. In November
32 through February, no wholesaler may sell any quantity of drug products
33 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
34 salts, isomers, or salts of isomers if the total monthly sales of these
35 products to persons within the state of Washington exceed ten percent
36 of the wholesaler's total prior monthly sales of nonprescription drugs

1 to persons within the state. For purposes of this section, monthly
2 sales means total dollars paid by buyers. The board may suspend or
3 revoke the license of any wholesaler that violates this section.

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

11 (6) The requirements for a license apply to all persons, in
12 Washington and outside of Washington, who sell both legend drugs and
13 nonprescription drugs and to those who sell only nonprescription drugs,
14 at wholesale to pharmacies, practitioners, and shopkeepers in
15 Washington.

16 (7) No wholesaler may sell any quantity of ephedrine,
17 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
18 of isomers, to any person in Washington other than a pharmacy licensed
19 under this chapter, a shopkeeper or itinerant vendor registered under
20 this chapter, or a practitioner as defined in RCW 18.64.011. A
21 violation of this subsection is punishable as a class C felony
22 according to chapter 9A.20 RCW, and each sale in violation of this
23 subsection constitutes a separate offense.

24 **Sec. 4.** RCW 18.64.047 and 2003 c 53 s 134 are each amended to read
25 as follows:

26 (1) Any itinerant vendor or any peddler of any nonprescription drug
27 or preparation for the treatment of disease or injury, shall pay a
28 registration fee determined by the secretary on a date to be determined
29 by the secretary as provided in RCW 43.70.250 and 43.70.280. The
30 department may issue a registration to such vendor on an approved
31 application made to the department.

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

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

7 (4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or
8 phenylpropanolamine, or their salts, isomers, or salts of isomers only
9 from a wholesaler licensed by the department under RCW 18.64.046 or
10 from a manufacturer licensed by the department under RCW 18.64.045.

11 (5) No itinerant vendor may sell any quantity of ephedrine,
12 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
13 salts of isomers, if the total monthly sales of these products exceed
14 ten percent of the itinerant vendor's total prior monthly sales of
15 nonprescription drugs in March through October. In November through
16 February, no itinerant vendor may sell any quantity of ephedrine,
17 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
18 salts of isomers, if the total monthly sales of these products exceed
19 twenty percent of the itinerant vendor's total prior monthly sales of
20 nonprescription drugs. For purposes of this section, monthly sales
21 means total dollars paid by buyers. The board may suspend or revoke
22 the registration of an itinerant vendor who violates this subsection.

23 (6) Itinerant vendors shall maintain inventory records of the
24 receipt and disposition of nonprescription drugs, utilizing existing
25 inventory controls if an auditor or investigator can determine
26 compliance with subsection (5) of this section, and otherwise in the
27 form and manner required by the board. These records shall be
28 available for inspection by the board or any law enforcement agency and
29 shall be maintained for two years. The board may suspend or revoke the
30 registration of an itinerant vendor who violates this subsection. For
31 purposes of this subsection, "disposition" means the return of product
32 to the wholesaler or distributor.

33 **Sec. 5.** RCW 69.43.110 and 2001 c 96 s 9 are each amended to read
34 as follows:

35 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or
36 itinerant vendor registered with, the department of health under

1 chapter 18.64 RCW, or an employee thereof, or a practitioner as defined
2 in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish,
3 in a single transaction:

4 (a) More than three packages of one or more products that he or she
5 knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine,
6 their salts, isomers, or salts of isomers; or

7 (b) A single package of any product that he or she knows to contain
8 more than three grams of ephedrine, pseudoephedrine, or
9 phenylpropanolamine, their salts, isomers, or salts of isomers, or a
10 combination of any of these substances.

11 (2) It is unlawful for a person who is not a manufacturer,
12 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor
13 licensed by or registered with the department of health under chapter
14 18.64 RCW to purchase or acquire, in any twenty-four hour period, more
15 than the quantities of the substances specified in subsection (1) of
16 this section.

17 (3) It is unlawful for any person to sell or distribute any of the
18 substances specified in subsection (1) of this section unless the
19 person is licensed by or registered with the department of health under
20 chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

21 (4) A violation of this section is a gross misdemeanor.

22 **Sec. 6.** RCW 69.43.035 and 2001 c 96 s 4 are each amended to read
23 as follows:

24 (1) Any manufacturer or wholesaler who sells, transfers, or
25 otherwise furnishes any substance specified in RCW 69.43.010(1) to any
26 person in a suspicious transaction shall report the transaction in
27 writing to the state board of pharmacy.

28 (2) Any person specified in subsection (1) of this section who does
29 not submit a report as required by subsection (1) of this section is
30 guilty of a gross misdemeanor.

31 (3) For the purposes of this section, "suspicious transaction"
32 means a sale or transfer to which any of the following applies:

33 (a) The circumstances of the sale or transfer would lead a
34 reasonable person to believe that the substance is likely to be used
35 for the purpose of unlawfully manufacturing a controlled substance
36 under chapter 69.50 RCW, based on such factors as the amount involved,

1 the method of payment, the method of delivery, and any past dealings
2 with any participant in the transaction. The state board of pharmacy
3 shall adopt by rule criteria for determining whether a transaction is
4 suspicious, taking into consideration the recommendations in appendix
5 A of the report to the United States attorney general by the suspicious
6 orders task force under the federal comprehensive methamphetamine
7 control act of 1996.

8 (b) The transaction involves payment for any substance specified in
9 RCW 69.43.010(1) in cash or money orders in a total amount of more than
10 two hundred dollars.

11 (4) The board of pharmacy shall transmit to the department of
12 revenue a copy of each report of a suspicious transaction that it
13 receives under this section.

14 **Sec. 7.** RCW 69.43.130 and 2001 c 96 s 11 are each amended to read
15 as follows:

16 RCW 69.43.110 and 69.43.120 do not apply to:

17 (1) Pediatric products primarily intended for administration to
18 children under twelve years of age, according to label instructions,
19 either: (a) In solid dosage form whose individual dosage units do not
20 exceed fifteen milligrams of ephedrine, pseudoephedrine, or
21 phenylpropanolamine; or (b) in liquid form whose recommended dosage,
22 according to label instructions, does not exceed fifteen milligrams of
23 ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters
24 of liquid product;

25 (2) Pediatric liquid products primarily intended for administration
26 to children under two years of age for which the recommended dosage
27 does not exceed two milliliters and the total package content does not
28 exceed one fluid ounce; (~~or~~)

29 (3) Products that the state board of pharmacy, upon application of
30 a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120
31 because the product has been formulated in such a way as to effectively
32 prevent the conversion of the active ingredient into methamphetamine,
33 or its salts or precursors; or

34 (4) Products, as packaged, that the board of pharmacy, upon
35 application of a manufacturer, exempts from RCW 69.43.110(1)(b) and
36 69.43.120 because:

1 (a) The product meets the federal definition of an ordinary over-
2 the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

3 (b) The product is a salt, isomer, or salts of isomers of
4 pseudoephedrine and, as packaged, has a total weight of more than three
5 grams but the net weight of the pseudoephedrine base is equal to or
6 less than three grams; and

7 (c) The board of pharmacy determines that the value to the people
8 of the state of having the product, as packaged, available for sale to
9 consumers outweighs the danger, and the product, as packaged, has not
10 been used in the illegal manufacture of methamphetamine.

11 NEW SECTION. Sec. 8. If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. Sec. 9. This act takes effect July 1, 2004."

16 Correct the title.

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