

SSB 6478 - S AMD 650  
By Senator Brandland

ADOPTED 02/13/2004

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. The board shall issue a warning to a  
14 shopkeeper who violates this subsection, and may suspend or revoke the  
15 registration of the shopkeeper for a subsequent violation.

16 (6) A shopkeeper who has purchased ephedrine, pseudoephedrine, or  
17 phenylpropanolamine, or their salts, isomers, or salts of isomers, in  
18 a suspicious transaction as defined in RCW 69.43.035, is subject to the  
19 following requirements:

20 (a) The shopkeeper may not sell any quantity of ephedrine,  
21 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
22 salts of isomers, if the total monthly sales of these products exceed  
23 ten percent of the shopkeeper's total prior monthly sales of  
24 nonprescription drugs in March through October. In November through  
25 February, the shopkeeper may not sell any quantity of ephedrine,  
26 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
27 salts of isomers, if the total monthly sales of these products exceed  
28 twenty percent of the shopkeeper's total prior monthly sales of  
29 nonprescription drugs. For purposes of this section, "monthly sales"  
30 means total dollars paid by buyers. The board may suspend or revoke  
31 the registration of a shopkeeper who violates this subsection.

32 (b) The shopkeeper shall maintain inventory records of the receipt  
33 and disposition of nonprescription drugs, utilizing existing inventory  
34 controls if an auditor or investigator can determine compliance with  
35 (a) of this subsection, and otherwise in the form and manner required  
36 by the board. The records must be available for inspection by the  
37 board or any law enforcement agency and must be maintained for two

1 years. The board may suspend or revoke the registration of a  
2 shopkeeper who violates this subsection. For purposes of this  
3 subsection, "disposition" means the return of product to the wholesaler  
4 or distributor.

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

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

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

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

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

1 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their  
2 salts, isomers, or salts of isomers if the total monthly sales of these  
3 products to persons within the state of Washington exceed ten percent  
4 of the wholesaler's total prior monthly sales of nonprescription drugs  
5 to persons within the state. For purposes of this section, monthly  
6 sales means total dollars paid by buyers. The board may suspend or  
7 revoke the license of any wholesaler that violates this section.

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

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

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

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

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

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

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

12 (4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or  
13 phenylpropanolamine, or their salts, isomers, or salts of isomers only  
14 from a wholesaler licensed by the department under RCW 18.64.046 or  
15 from a manufacturer licensed by the department under RCW 18.64.045.  
16 The board shall issue a warning to an itinerant vendor who violates  
17 this subsection, and may suspend or revoke the registration of the  
18 vendor for a subsequent violation.

19 (5) An itinerant vendor who has purchased ephedrine,  
20 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
21 salts of isomers, in a suspicious transaction as defined in RCW  
22 69.43.035, is subject to the following requirements:

23 (a) The itinerant vendor may not sell any quantity of ephedrine,  
24 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
25 salts of isomers, if the total monthly sales of these products exceed  
26 ten percent of the vendor's total prior monthly sales of  
27 nonprescription drugs in March through October. In November through  
28 February, the vendor may not sell any quantity of ephedrine,  
29 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or  
30 salts of isomers, if the total monthly sales of these products exceed  
31 twenty percent of the vendor's total prior monthly sales of  
32 nonprescription drugs. For purposes of this section, "monthly sales"  
33 means total dollars paid by buyers. The board may suspend or revoke  
34 the registration of an itinerant vendor who violates this subsection.

35 (b) The itinerant vendor shall maintain inventory records of the  
36 receipt and disposition of nonprescription drugs, utilizing existing  
37 inventory controls if an auditor or investigator can determine

1 compliance with (a) of this subsection, and otherwise in the form and  
2 manner required by the board. The records must be available for  
3 inspection by the board or any law enforcement agency and must be  
4 maintained for two years. The board may suspend or revoke the  
5 registration of an itinerant vendor who violates this subsection. For  
6 purposes of this subsection, "disposition" means the return of product  
7 to the wholesaler or distributor.

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

10 (1) It is unlawful for a pharmacy licensed by, or shopkeeper or  
11 itinerant vendor registered with, the department of health under  
12 chapter 18.64 RCW, or an employee thereof, or a practitioner as defined  
13 in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish,  
14 in a single transaction:

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

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

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, more  
26 than the quantities of the substances specified in subsection (1) of  
27 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 **Sec. 6.** RCW 69.43.035 and 2001 c 96 s 4 are each amended to read  
34 as follows:

35 (1) Any manufacturer or wholesaler who sells, transfers, or

1 otherwise furnishes any substance specified in RCW 69.43.010(1) to any  
2 person in a suspicious transaction shall report the transaction in  
3 writing to the state board of pharmacy.

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

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

9 (a) The circumstances of the sale or transfer would lead a  
10 reasonable person to believe that the substance is likely to be used  
11 for the purpose of unlawfully manufacturing a controlled substance  
12 under chapter 69.50 RCW, based on such factors as the amount involved,  
13 the method of payment, the method of delivery, and any past dealings  
14 with any participant in the transaction. The state board of pharmacy  
15 shall adopt by rule criteria for determining whether a transaction is  
16 suspicious, taking into consideration the recommendations in appendix  
17 A of the report to the United States attorney general by the suspicious  
18 orders task force under the federal comprehensive methamphetamine  
19 control act of 1996.

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

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

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

28 RCW 69.43.110 and 69.43.120 do not apply to:

29 (1) Pediatric products primarily intended for administration to  
30 children under twelve years of age, according to label instructions,  
31 either: (a) In solid dosage form whose individual dosage units do not  
32 exceed fifteen milligrams of ephedrine, pseudoephedrine, or  
33 phenylpropanolamine; or (b) in liquid form whose recommended dosage,  
34 according to label instructions, does not exceed fifteen milligrams of  
35 ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters  
36 of liquid product;

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

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

10 (4) Products, as packaged, that the board of pharmacy, upon  
11 application of a manufacturer, exempts from RCW 69.43.110(1)(b) and  
12 69.43.120 because:

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

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

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

23 NEW SECTION. Sec. 8. If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

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

**SSB 6478 - S AMD 650**  
By Senator Brandland

**ADOPTED 02/13/2004**

28 On page 1, line 2 of the title, after "phenylpropanolamine;" strike



1 the remainder of the title and insert "amending RCW 18.64.046,  
2 18.64.047, 69.43.110, 69.43.035, and 69.43.130; reenacting and amending  
3 RCW 18.64.044; creating a new section; prescribing penalties; and  
4 providing an effective date."

--- END ---