
ENGROSSED SUBSTITUTE HOUSE BILL 2844

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Lovick, Morrell, Benson, Campbell, Simpson, G., Bush, Quall, Upthegrove and Schual-Berke; by request of Department of Health and Washington State Patrol)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to further regulation of the sale of ephedrine,
2 pseudoephedrine, and phenylpropanolamine; amending RCW 18.64.046,
3 18.64.047, 69.43.110, 69.43.035, and 69.43.130; reenacting and amending
4 RCW 18.64.044; creating a new section; prescribing penalties; and
5 providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

17 (1) A shopkeeper registered as provided in this section may sell

1 nonprescription drugs, if such drugs are sold in the original package
2 of the manufacturer.

3 (2) Every shopkeeper not a licensed pharmacist, desiring to secure
4 the benefits and privileges of this section, is hereby required to
5 register as a shopkeeper through the master license system, and he or
6 she shall pay the fee determined by the secretary for registration, and
7 on a date to be determined by the secretary thereafter the fee
8 determined by the secretary for renewal of the registration; and shall
9 at all times keep said registration or the current renewal thereof
10 conspicuously exposed in the (~~shop~~) location to which it applies. In
11 event such shopkeeper's registration is not renewed by the master
12 license expiration date, no renewal or new registration shall be issued
13 except upon payment of the registration renewal fee and the master
14 license delinquency fee under chapter 19.02 RCW. This registration fee
15 shall not authorize the sale of legend drugs or controlled substances.

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

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

24 (5) A shopkeeper who is not a licensed pharmacy may purchase
25 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
26 isomers, or salts of isomers, only from a wholesaler licensed by the
27 department under RCW 18.64.046 or from a manufacturer licensed by the
28 department under RCW 18.64.045. A person violating this subsection is
29 guilty of a gross misdemeanor, and each purchase in violation of this
30 subsection constitutes a separate offense.

31 (6) No shopkeeper who is not a licensed pharmacy may sell any
32 quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or
33 their salts, isomers, or salts of isomers, if the total monthly sales
34 of these products exceed ten percent of the shopkeeper's total prior
35 monthly sales of nonprescription drugs in March through October. In
36 November through February, no shopkeeper may sell any quantity of
37 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
38 isomers, or salts of isomers, if the total monthly sales of these

1 products exceed twenty percent of the shopkeeper's total prior monthly
2 sales of nonprescription drugs. For purposes of this section, monthly
3 sales means total dollars paid by buyers. The board may suspend or
4 revoke the registration of a shopkeeper who violates this subsection.

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

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

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

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

36 (3) In event the license fee remains unpaid on the date due, no

1 renewal or new license shall be issued except upon compliance with
2 administrative procedures, administrative requirements, and fees
3 determined as provided in RCW 43.70.250 and 43.70.280.

4 (4) No wholesaler may sell any quantity of drug products containing
5 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,
6 isomers, or salts of isomers, if the total monthly sales of these
7 products to persons within the state of Washington exceed five percent
8 of the wholesaler's total prior monthly sales of nonprescription drugs
9 to persons within the state in March through October. In November
10 through February, no wholesaler may sell any quantity of drug products
11 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
12 salts, isomers, or salts of isomers if the total monthly sales of these
13 products to persons within the state of Washington exceed ten percent
14 of the wholesaler's total prior monthly sales of nonprescription drugs
15 to persons within the state. For purposes of this section, monthly
16 sales means total dollars paid by buyers. The board may suspend or
17 revoke the license of any wholesaler that violates this section.

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

25 (6) The requirements for a license apply to all persons, in
26 Washington and outside of Washington, who sell both legend drugs and
27 nonprescription drugs and to those who sell only nonprescription drugs,
28 at wholesale to pharmacies, practitioners, and shopkeepers in
29 Washington.

30 (7) No wholesaler may sell any quantity of ephedrine,
31 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
32 of isomers, to any person in Washington other than a pharmacy licensed
33 under this chapter, a shopkeeper or itinerant vendor registered under
34 this chapter, or a practitioner as defined in RCW 18.64.011. A
35 violation of this subsection is punishable as a class C felony
36 according to chapter 9A.20 RCW, and each sale in violation of this
37 subsection constitutes a separate offense.

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

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

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

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

20 (4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or
21 phenylpropanolamine, or their salts, isomers, or salts of isomers only
22 from a wholesaler licensed by the department under RCW 18.64.046 or
23 from a manufacturer licensed by the department under RCW 18.64.045.

24 (5) No itinerant vendor may sell any quantity of ephedrine,
25 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
26 salts of isomers, if the total monthly sales of these products exceed
27 ten percent of the itinerant vendor's total prior monthly sales of
28 nonprescription drugs in March through October. In November through
29 February, no itinerant vendor may sell any quantity of ephedrine,
30 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
31 salts of isomers, if the total monthly sales of these products exceed
32 twenty percent of the itinerant vendor's total prior monthly sales of
33 nonprescription drugs. For purposes of this section, monthly sales
34 means total dollars paid by buyers. The board may suspend or revoke
35 the registration of an itinerant vendor who violates this subsection.

36 (6) Itinerant vendors shall maintain inventory records of the
37 receipt and disposition of nonprescription drugs, utilizing existing
38 inventory controls if an auditor or investigator can determine

1 compliance with subsection (5) of this section, and otherwise in the
2 form and manner required by the board. These records shall be
3 available for inspection by the board or any law enforcement agency and
4 shall be 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.

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