
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, and 69.43.035; reenacting and amending RCW
4 18.64.044; creating a new section; prescribing penalties; and providing
5 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 may purchase ephedrine, pseudoephedrine, or
25 phenylpropanolamine, or their salts, isomers, or salts of isomers, only
26 from a wholesaler licensed by the department under RCW 18.64.046 or
27 from a manufacturer licensed by the department under RCW 18.64.045. A
28 person violating this subsection is guilty of a gross misdemeanor, and
29 each purchase in violation of this subsection constitutes a separate
30 offense.

31 (6) No shopkeeper may sell any quantity of ephedrine,
32 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
33 salts of isomers, if the total monthly sales of these products exceed
34 ten percent of the shopkeeper's total prior monthly sales of
35 nonprescription drugs in March through October. In November through
36 February, no shopkeeper may sell any quantity of ephedrine,
37 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
38 salts of isomers, if the total monthly sales of these products exceed

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

5 (7) Shopkeepers shall maintain inventory records of the receipt and
6 disposition of nonprescription drugs in the form and manner required by
7 the board. The records shall be available for inspection by the board
8 or any law enforcement agency and shall be maintained for two years.
9 The board may suspend or revoke the registration of a shopkeeper who
10 violates this subsection.

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

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

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

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

36 (4) No wholesaler may sell any quantity of drug products containing
37 ephedrine, pseudoephedrine, phenylpropanolamine, or their salts,

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

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

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

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

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

34 (2) Any itinerant vendor or peddler who shall vend or sell, or
35 offer to sell to the public any such nonprescription drug or
36 preparation without having registered to do so as provided in this

1 section, is guilty of a misdemeanor and each sale or offer to sell
2 shall constitute a separate offense.

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

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

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

25 (6) Itinerant vendors shall maintain inventory records of the
26 receipt and disposition of nonprescription drugs in the form and manner
27 required by the board. These records shall be available for inspection
28 by the board or any law enforcement agency and shall be maintained for
29 two years. The board may suspend or revoke the registration of an
30 itinerant vendor who violates this subsection.

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

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

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

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

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

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

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

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

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

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

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

30 (a) The circumstances of the sale or transfer would lead a
31 reasonable person to believe that the substance is likely to be used
32 for the purpose of unlawfully manufacturing a controlled substance
33 under chapter 69.50 RCW, based on such factors as the amount involved,
34 the method of payment, the method of delivery, and any past dealings
35 with any participant in the transaction. The state board of pharmacy
36 shall adopt by rule criteria for determining whether a transaction is
37 suspicious, taking into consideration the recommendations in appendix

1 A of the report to the United States attorney general by the suspicious
2 orders task force under the federal comprehensive methamphetamine
3 control act of 1996.

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

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

10 NEW SECTION. Sec. 7. If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. Sec. 8. This act takes effect July 1, 2004.

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