

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6478

Chapter 52, Laws of 2004

58th Legislature
2004 Regular Session

EPHEDRINE--SALES

EFFECTIVE DATE: 7/1/04

Passed by the Senate February 13, 2004
YEAS 45 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 2, 2004
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 22, 2004.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
6478** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

March 22, 2004 - 4:38 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6478

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Brandland, Franklin, Deccio, Rasmussen, McCaslin, Murray, B. Sheldon, Parlette, Winsley and Regala; 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. The board shall issue a warning to a
29 shopkeeper who violates this subsection, and may suspend or revoke the
30 registration of the shopkeeper for a subsequent violation.

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

35 (a) The shopkeeper may not sell any quantity of ephedrine,
36 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
37 salts of isomers, if the total monthly sales of these products exceed
38 ten percent of the shopkeeper's total prior monthly sales of

1 nonprescription drugs in March through October. In November through
2 February, the shopkeeper may not sell any quantity of ephedrine,
3 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
4 salts of isomers, if the total monthly sales of these products exceed
5 twenty percent of the shopkeeper's total prior monthly sales of
6 nonprescription drugs. For purposes of this section, "monthly sales"
7 means total dollars paid by buyers. The board may suspend or revoke
8 the registration of a shopkeeper who violates this subsection.

9 (b) The shopkeeper shall maintain inventory records of the receipt
10 and disposition of nonprescription drugs, utilizing existing inventory
11 controls if an auditor or investigator can determine compliance with
12 (a) of this subsection, and otherwise in the form and manner required
13 by the board. The records must be available for inspection by the
14 board or any law enforcement agency and must be maintained for two
15 years. The board may suspend or revoke the registration of a
16 shopkeeper who violates this subsection. For purposes of this
17 subsection, "disposition" means the return of product to the wholesaler
18 or distributor.

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

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

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

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

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

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

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

33 (7) No wholesaler may sell any quantity of ephedrine,
34 pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts
35 of isomers, to any person in Washington other than a pharmacy licensed
36 under this chapter, a shopkeeper or itinerant vendor registered under
37 this chapter, or a practitioner as defined in RCW 18.64.011. A

1 violation of this subsection is punishable as a class C felony
2 according to chapter 9A.20 RCW, and each sale in violation of this
3 subsection constitutes a separate offense.

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

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

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

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

23 (4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or
24 phenylpropanolamine, or their salts, isomers, or salts of isomers only
25 from a wholesaler licensed by the department under RCW 18.64.046 or
26 from a manufacturer licensed by the department under RCW 18.64.045.
27 The board shall issue a warning to an itinerant vendor who violates
28 this subsection, and may suspend or revoke the registration of the
29 vendor for a subsequent violation.

30 (5) An itinerant vendor who has purchased ephedrine,
31 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
32 salts of isomers, in a suspicious transaction as defined in RCW
33 69.43.035, is subject to the following requirements:

34 (a) The itinerant vendor may not sell any quantity of ephedrine,
35 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
36 salts of isomers, if the total monthly sales of these products exceed
37 ten percent of the vendor's total prior monthly sales of

1 nonprescription drugs in March through October. In November through
2 February, the vendor may not sell any quantity of ephedrine,
3 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or
4 salts of isomers, if the total monthly sales of these products exceed
5 twenty percent of the vendor's total prior monthly sales of
6 nonprescription drugs. For purposes of this section, "monthly sales"
7 means total dollars paid by buyers. The board may suspend or revoke
8 the registration of an itinerant vendor who violates this subsection.

9 (b) The itinerant vendor shall maintain inventory records of the
10 receipt and disposition of nonprescription drugs, utilizing existing
11 inventory controls if an auditor or investigator can determine
12 compliance with (a) of this subsection, and otherwise in the form and
13 manner required by the board. The records must be available for
14 inspection by the board or any law enforcement agency and must be
15 maintained for two years. The board may suspend or revoke the
16 registration of an itinerant vendor who violates this subsection. For
17 purposes of this subsection, "disposition" means the return of product
18 to the wholesaler or distributor.

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

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

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

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

33 (2) It is unlawful for a person who is not a manufacturer,
34 wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor
35 licensed by or registered with the department of health under chapter
36 18.64 RCW to purchase or acquire, in any twenty-four hour period, more

1 than the quantities of the substances specified in subsection (1) of
2 this section.

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

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

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

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

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

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

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

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

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

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

3 RCW 69.43.110 and 69.43.120 do not apply to:

4 (1) Pediatric products primarily intended for administration to
5 children under twelve years of age, according to label instructions,
6 either: (a) In solid dosage form whose individual dosage units do not
7 exceed fifteen milligrams of ephedrine, pseudoephedrine, or
8 phenylpropanolamine; or (b) in liquid form whose recommended dosage,
9 according to label instructions, does not exceed fifteen milligrams of
10 ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters
11 of liquid product;

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

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

21 (4) Products, as packaged, that the board of pharmacy, upon
22 application of a manufacturer, exempts from RCW 69.43.110(1)(b) and
23 69.43.120 because:

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

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

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

34 NEW SECTION. **Sec. 8.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

2 NEW SECTION. **Sec. 9.** This act takes effect July 1, 2004.

Passed by the Senate February 13, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.