

ESHB 2266 - S COMM AMD
By Committee on Ways & Means

ADOPTED AS AMENDED 04/13/2005

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

3 "NEW SECTION. **Sec. 1.** Restricting access to certain precursor
4 drugs used to manufacture methamphetamine to ensure that they are only
5 sold at retail to individuals who will use them for legitimate purposes
6 upon production of proper identification is an essential step to
7 controlling the manufacture of methamphetamine.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.43 RCW
9 to read as follows:

10 (1) Any product containing ephedrine, pseudoephedrine, or
11 phenylpropanolamine, or their salts, isomers, or salts of isomers as
12 its only active ingredient, sold at retail shall be sold only by a
13 pharmacy licensed by, or shopkeeper or itinerant vendor registered
14 with, the department of health under chapter 18.64 RCW, or an employee
15 thereof, or a practitioner as defined in RCW 18.64.011. A pharmacy
16 licensed by, or shopkeeper or itinerant vendor registered with, the
17 department of health under chapter 18.64 RCW, or an employee thereof,
18 or a practitioner as defined in RCW 18.64.011 may only sell products
19 containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their
20 salts, isomers, or salts of isomers as its only active ingredient to
21 customers that are at least eighteen years old, upon presentation of
22 photographic identification that shows the date of birth of the person.
23 The products must be kept in a location that is not accessible by
24 customers without the assistance of an employee of the merchant.

25 (2) A person buying or receiving a product at retail containing
26 ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
27 isomers, or salts of isomers as its only active ingredient, from a
28 pharmacy licensed by, or shopkeeper or itinerant vendor registered
29 with, the department of health under chapter 18.64 RCW, or an employee

1 thereof, or a practitioner as defined in RCW 18.64.011, must be at
2 least eighteen years old and must first produce photographic
3 identification of the person that shows the date of birth of the
4 person.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.43 RCW
6 to read as follows:

7 (1)(a) The Washington association of sheriffs and police chiefs or
8 the Washington state patrol may petition the state board of pharmacy to
9 establish restrictions for one or more products containing any amount
10 of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts,
11 isomers, or salts of isomers, in combination with another active
12 ingredient. The petition shall establish that:

13 (i) Ephedrine, pseudoephedrine, or phenylpropanolamine can be
14 effectively extracted from the product and converted into
15 methamphetamine or another controlled dangerous substance; and

16 (ii) Law enforcement, the Washington state patrol, or the
17 department of ecology are finding substantial evidence that the product
18 is being used for the illegal manufacture of methamphetamine or another
19 controlled dangerous substance.

20 (b) The state board of pharmacy shall adopt rules when a petition
21 establishes that restricting the sale of the product at retail is
22 warranted based upon the effectiveness and extent of use of the product
23 for the illegal manufacture of methamphetamine or other controlled
24 dangerous substances and the extent of the burden of any restrictions
25 upon consumers. The state board of pharmacy may adopt such
26 restrictions as are warranted to prevent access to the product for use
27 for the illegal manufacture of methamphetamine or another controlled
28 dangerous substance, including the presentation of photographic
29 identification and accessibility requirements. The state board of
30 pharmacy may adopt emergency rules to restrict the sale of a product
31 when the petition establishes that the immediate restriction of the
32 product is necessary in order to protect public health and safety.

33 (c) A manufacturer of a drug product may apply for removal of the
34 product from this section if the product is determined by the state
35 board of pharmacy to have been formulated in such a way as to
36 effectively prevent the conversion of the active ingredient into
37 methamphetamine. The burden of proof for exemption is upon the person

1 requesting the exemption. The petitioner shall provide the state board
2 of pharmacy with evidence that the product has been formulated in such
3 a way as to serve as an effective general deterrent to the conversion
4 of pseudoephedrine into methamphetamine. The evidence must include the
5 furnishing of a valid scientific study, conducted by an independent,
6 professional laboratory and evincing professional quality chemical
7 analysis. Factors to be considered in whether a product should be
8 excluded from this section include but are not limited to:

9 (i) Ease with which the product can be converted to
10 methamphetamine;

11 (ii) Ease with which pseudoephedrine is extracted from the
12 substance and whether it forms an emulsion, salt, or other form;

13 (iii) Whether the product contains a "molecular lock" that renders
14 it incapable of being converted into methamphetamine;

15 (iv) Presence of other ingredients that render the product less
16 likely to be used in the manufacture of methamphetamine; and

17 (v) Any pertinent data that can be used to determine the risk of
18 the substance being used in the illegal manufacture of methamphetamine
19 or any other controlled substance.

20 (2) Nothing in this section applies:

21 (a) To the sale of a product that may only be sold upon the
22 presentation of a prescription; or

23 (b) When the details of the transaction are recorded in a pharmacy
24 profile individually identified with the recipient and maintained by a
25 licensed pharmacy or registered shopkeeper or itinerant vendor.

26 (3)(a) No pharmacy licensed by, or shopkeeper or itinerant vendor
27 registered with, the department of health under chapter 18.64 RCW, or
28 a practitioner as defined in RCW 18.64.011, may retaliate against any
29 employee that has made a good faith attempt to comply with any
30 requirement that the state board of pharmacy may impose under
31 subsection (1) of this section.

32 (b) No pharmacy licensed by, or shopkeeper or itinerant vendor
33 registered with, the department of health under chapter 18.64 RCW, or
34 a practitioner as defined in RCW 18.64.011, is subject to prosecution
35 under subsection (4) of this section if they made a good faith attempt
36 to comply with any requirement that the state board of pharmacy may
37 impose under subsection (1) of this section.

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

1 NEW SECTION. **Sec. 4.** (1) The state board of pharmacy shall
2 convene a work group to study the need for requiring and maintaining
3 logs of transactions involving ephedrine, pseudoephedrine, or
4 phenylpropanolamine.

5 (2) The study shall include:

6 (a) Whether a log is an effective law enforcement tool;

7 (b) What information is needed to make logs useful as a deterrent
8 to criminal activity;

9 (c) The most effective method of obtaining, recording, and storing
10 log information in the least intrusive manner available;

11 (d) How long the information recorded in the logs should be
12 maintained; and

13 (e) How logs can be most effectively transmitted to law enforcement
14 and the state board of pharmacy.

15 (3) The work group shall consist of:

16 (a) One representative from law enforcement appointed by the
17 Washington association of sheriffs and police chiefs;

18 (b) One representative appointed by the Washington association of
19 prosecuting attorneys;

20 (c) One representative appointed by the office of the attorney
21 general;

22 (d) One representative appointed by the state board of pharmacy;
23 and

24 (e) Two representatives from the retail industry.

25 (4) The state board of pharmacy shall report to the legislature no
26 later than November 30, 2005, regarding the findings of the work group
27 along with any recommendations or proposed legislation."

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28 On page 1, line 2 of the title, after "phenylpropanolamine;" strike
29 the remainder of the title and insert "adding new sections to chapter
30 69.43 RCW; creating new sections; and prescribing penalties."

EFFECT: Removes identification, log, accessibility, and age requirements on the sale of products containing ephedrine, pseudoephedrine, and phenylpropanolamine in combination with another active ingredient. Authorizes the Washington Association of Sheriffs and Police Chiefs or the Washington State Patrol to petition the Board of Pharmacy to place restrictions on products containing ephedrine, pseudoephedrine, and phenylpropanolamine in combination with another active ingredient when there is evidence of their use for the illegal manufacture of methamphetamine or another dangerous controlled substance. Permits the Board of Pharmacy to adopt rules to restrict products upon petition of the Washington Association of Sheriffs and Police Chiefs. Establishes criteria to remove restrictions from products.

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