

HOUSE BILL REPORT

HB 1797

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to automating the reporting requirements for ephedrine, pseudoephedrine, and phenylpropanolamine sales by establishing a state repository.

Brief Description: Automating the reporting requirements for ephedrine, pseudoephedrine, and phenylpropanolamine sales by establishing a state repository.

Sponsors: Representatives O'Brien, Campbell and Morrell.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/12/07, 2/22/07 [DPS].

Brief Summary of Substitute Bill

- Expands the duties of a current, ongoing State Board of Pharmacy workgroup to include studying the possibility of requiring all retailers to install technology for the scanning of the identification card of any person purchasing ephedrine-type products and to maintain a central repository of the electronic logs.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Lovick.

Staff: Yvonne Walker (786-7841).

Background:

Precursor drugs are substances that can be used to manufacture controlled substances. For example: ephedrine, pseudoephedrine, and phenylpropanolamine are common precursor ingredients that are often used to illegally manufacture methamphetamine. Methamphetamine is a highly addictive substance that affects the central nervous system.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 2001, the Legislature passed legislation (ESSB 5017) that placed restrictions on the sale and distribution of ephedrine, pseudoephedrine, or phenylpropanolamine. The legislation instituted a number of measures including: providing reporting and record keeping requirements for the sale of these precursor substances; restricting the retail sale of the precursor substances; and limiting the quantity that a person may possess.

In Washington, only pharmacies, authorized health care practitioners, and registered shopkeepers and itinerant vendors may sell products containing ephedrine, pseudoephedrine, or phenylpropanolamine to consumers. They may not sell more than two packages of these products in a single transaction or a single product containing more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

In 2005, Engrossed Substitute House Bill 2266 was enacted that created a statewide pilot project to require that merchants record transactions involving products that contain any detectable quantity of ephedrine, pseudoephedrine, or phenylpropanolamine through written or electronic logs or other means. The legislation required the State Board of Pharmacy (Board) to develop a workgroup to evaluate the data received by the pilot project to determine the effectiveness of logs in preventing the illegal manufacture of methamphetamine. The workgroup consists of representatives of law enforcement, the Washington State Patrol, the prosecuting attorneys, the Office of the Attorney General, the Board, and the retail industry. The workgroup must present its findings and recommendations to the Legislature by November 1, 2007.

Summary of Substitute Bill:

The duties of the workgroup established by the Board in 2005 is expanded. In addition to determining the effectiveness of logs in preventing the illegal manufacture of methamphetamine, the workgroup must study and make recommendations regarding the following:

- The implementation of technology for the scanning of a driver's license or state-issued identification card of any person that procures or purchases any product containing ephedrine, pseudoephedrine, and phenylpropanolamine or any of their salts, isomers, or salts of isomers.
- The possibility of requiring all retailers to collect and maintain electronic logs to record retail transactions involving ephedrine, pseudoephedrine, and phenylpropanolamine.
- The establishment and maintenance of a central repository of the electronic logs furnished to the Board by each retailer that will: keep each log furnished to the Board for a period of two years; be capable of checking compliance against all local, state, and federal laws, including interfacing with other states to assure comprehensive compliance; and be accessible to all law enforcement agencies.
- How Washington is complying with the federal Combat Methamphetamine Epidemic Act of 2005.

Substitute Bill Compared to Original Bill:

The substitute bill requires the current ongoing workgroup established by the Board in 2005 (Engrossed Substitute House Bill 2266) to specifically study:

- the implementation of technology for the scanning of a driver's license or state-issued identification card of any person that procures or purchases any product containing ephedrine, pseudoephedrine, and phenylpropanolamine or any of their salts, isomers, or salts of isomers;
- the possibility of requiring all retailers to collect and maintain electronic logs to record retail transactions involving ephedrine, pseudoephedrine, and phenylpropanolamine;
- the establishment and maintenance of a central repository of the electronic logs furnished to the Board by each retailer; and
- how Washington is complying with the federal Combat Methamphetamine Epidemic Act of 2005.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) All the pharmacies in Snohomish County are sending their pseudoephedrine logs to their county law enforcement agency. The problem is that there is only one person that is dedicated to reviewing the logs to look for repeat offenders and this has become quite time consuming. There is one pharmacy in Monroe that is reporting their sales through an electronic means. This pilot project of electronic scanning, operated through a company called Leads on Labs, has been quite successful.

Currently the state is out of compliance with the federal requirements as the federal statute requires a signature for the purchase of a pseudoephedrine type of product and Washington does not. Congress is moving to a national registry for the logging of the sale of pseudoephedrine products.

State legislation enacted in the past has helped reduce methamphetamine labs across the state. The goal of this legislation is to prevent crimes from happening. In the State of Oklahoma, where stronger measures have been taken, methamphetamine crimes have been reduced by 83 percent.

(With concerns) There is concern that there are some decreases in the sale of pseudoephedrine products as consumers are seeking alternative products containing alternative decongestants instead. In addition, it is felt that there is a problem with devoting public resources and mandating expensive technology for retailers to track sales of a diminishing class of products.

(Opposed) Although there is concern about the increase of methamphetamine coming into the state, the existing law has played a considerable effect in reducing methamphetamine

production. However, retailers should be given the option to use either electronic or paper logs. The other alternative is for the state to provide the equipment or provide the funding for the purchase and installation of the necessary equipment. The purchase of scanning equipment could be quite expensive for both small and large retailers and grocers.

Retailers have tried to work with various entities in regards to putting out information about methamphetamine years ago, but the Legislature changed the law to limit sales to three packages. The following year the Legislature changed the law again to limit sales to two packages. Then it was changed again to limit sales to nine grams. The year after that retailers were required to put products containing precursor ingredients behind the counters and to maintain logs. Now, in addition to the equipment mandate, according to the fiscal note, there will be a fee imposed on each pharmacy to help pay for the implementation of this program.

Rite Aid has 144 stores in Washington and not one has Internet access. When the original law for maintaining logs was being considered it was requested to allow retailers to have the option of using electronic logs. It was felt that this would be more cost effective and easier to track sales across the state and nation. Each card reader device costs \$500, which does not include installation and the reprogramming of equipment that is currently being used. It will cost Rite Aid approximately \$1.5 to \$2 million to purchase and install the required equipment.

There is opposition against the log books because it compiles private information about people when they are purchasing a lawful product. Alcohol is a legal product but there is no requirement for a purchaser to give identification. Once an electronic database is established there is no safeguard measures to prevent a person from accessing personal identifying information. In addition, the information collected should only be turned over in the course of an ongoing investigation.

There is a federal mandate to require electronic logs. The Legislature should consider having the Board review what is being required at the federal level and whether the state is in compliance with federal regulations.

Persons Testifying: (In support) Detective David Chitwood, Snohomish Regional Drug Task Force; Representative Campbell; and Chris Johnson, Office of the Attorney General.

(With concerns) Vicky Marin, Washington Retail Association; and Lis Houchen, National Association of Chain Drug Stores.

(Opposed) Stu Halsan, Rite Aid; Jennifer Shaw, American Civil Liberties Union of Washington; Jan Gee, Washington Foods Industry; and Holly Chisa, Northwest Grocery Association.

Persons Signed In To Testify But Not Testifying: None.