CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5017

Chapter 96, Laws of 2001

57th Legislature
2001 Regular Session

METHAMPHETAMINE--PRECURSOR DRUG SALES LIMITS

EFFECTIVE DATE: 7/22/01

Passed by the Senate March 6, 2001
YEAS 39 NAYS 7

BRAD OWEN
President of the Senate

Passed by the House April 10, 2001
YEAS 91 NAYS 0

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Approved April 19, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5017** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

April 19, 2001 - 5:12 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5017

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Franklin, Winsley and Regala)

READ FIRST TIME 02/07/01.

AN ACT Relating to precursor drugs; amending RCW 69.43.010, 69.43.020, 69.43.040, and 69.43.090; adding new sections to chapter 69.43 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manufacture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of

illegal methamphetamine laboratories and the associated threats to public health and safety.

Sec. 2. RCW 69.43.010 and 1998 c 245 s 107 are each amended to read as follows:

(1) ((~~Beginning July 1, 1988,~~)) A report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person ((~~in this state~~)) any of the following substances or their salts or isomers:

(a) Anthranilic acid;

(b) Barbituric acid;

(c) Chlorephedrine;

(d) Diethyl malonate;

(e) D-lysergic acid;

(f) Ephedrine;

(g) Ergotamine tartrate;

(h) Ethylamine;

(i) Ethyl malonate;

(j) Ethylephedrine;

(k) Lead acetate;

(l) Malonic acid;

(m) Methylamine;

(n) ((~~Methylformanide~~)) Methylformamide;

(o) Methylephedrine;

(p) Methylpseudoephedrine;

(q) N-acetylanthranilic acid;

(r) Norpseudoephedrine;

(s) Phenylacetic acid;

(t) Phenylpropanolamine;

(u) Piperidine;

(v) Pseudoephedrine; and

(w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

(a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;

(b) The availability of the substance;

(c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and

(d) The extent and nature of legitimate uses for the substance.

(3)(a) ((~~Beginning on July 1, 1988,~~)) Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to ((~~a~~)) any person ((~~in this state~~)), require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means((~~, in the case of a face-to-face purchase,~~)):

(i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number((~~,~~));

(ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser((~~,~~));

(iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business((~~,~~));

(iv) A description of how the substance is to be used((~~,~~)); and

(v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser. ((~~The state board of pharmacy shall provide by rule for the proper identification of purchasers in other than face-to-face purchases.~~))

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) ((~~Beginning on July 1, 1988,~~)) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to ((~~a~~)) any person ((~~in this state~~)) shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which

includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by ((~~that~~)) subsection (4) of this section is guilty of a gross misdemeanor.

Sec. 3. RCW 69.43.020 and 1988 c 147 s 2 are each amended to read as follows:

(1) ((~~Beginning on July 1, 1988,~~)) Any manufacturer, wholesaler, retailer, or other person ((~~subject to any other reporting requirements in this chapter,~~)) who receives from a source outside of this state any substance specified in RCW 69.43.010(1)((~~,~~)) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

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

NEW SECTION. **Sec. 4.** A new section is added to chapter 69.43 RCW to read as follows:

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

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

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

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

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

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

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

(a) The name of the substance;

(b) The quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the state board of pharmacy and its authorized representatives and shall be maintained for two years.

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

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

A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the state board of pharmacy, and its authorized representatives:

(1) Computer readable data from which all of the required information may be readily derived; or

(2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy.

Sec. 7. RCW 69.43.040 and 1989 1st ex.s. c 9 s 441 are each amended to read as follows:

(1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

(a) Name of the substance;

(b) Quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under ((~~subsection (1)(e) of this section~~)) RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department.

Sec. 8. RCW 69.43.090 and 1989 1st ex.s. c 9 s 443 are each amended to read as follows:

(1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to ((~~a~~)) any person ((~~in this state~~)) or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor.

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

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

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

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

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

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

NEW SECTION. **Sec. 10.** A new section is added to chapter 69.43 RCW to read as follows:

(1) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a gross misdemeanor.

(2) This section does not apply to any of the following:

(a) A pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers upon the prescription of a practitioner, as defined in RCW 69.41.010;

(b) A practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to his or her patients;

(c) A pharmacy, manufacturer, or wholesaler licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW;

(d) A person in the course of his or her business of selling, transporting, or storing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, for a person described in (a), (b), or (c) of this subsection; or

(e) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates.

NEW SECTION. **Sec. 11.** A new section is added to chapter 69.43 RCW to read as follows:

Sections 9 and 10 of this act do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of

ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

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

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from sections 9 and 10 of this act because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

NEW SECTION. **Sec. 12.** A new section is added to chapter 69.43 RCW to read as follows:

(1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the state board of pharmacy may impose a civil penalty, not to exceed ten thousand dollars for each violation, on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The state board of pharmacy may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the state board of pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or otherwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws.

NEW SECTION. **Sec. 13.** A new section is added to chapter 69.43 RCW to read as follows:

This chapter is applicable and uniform throughout this state and in all counties, cities, code cities, and towns therein. A county, city, code city, or town may not adopt or enforce any ordinance, pertaining to this chapter, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those

provided under this chapter. However, this section does not preclude a county, city, code city, or town from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter.

NEW SECTION. **Sec. 14.** A new section is added to chapter 69.43 RCW to read as follows:

(1) To prevent violations of section 9 of this act, every licensee and registrant under chapter 18.64 RCW, who sells at retail any products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall do either or may do both of the following:

(a) Program scanners, cash registers, or other electronic devices used to record sales in a manner that will alert persons handling transactions to potential violations of section 9(1) of this act and/or prevent such violations; or

(b) Place one or more signs on the premises to notify customers of the prohibitions of section 9 of this act. Any such sign may, but is not required to, conform to the language and format prepared by the department of health under subsection (2) of this section.

(2) The department of health shall prepare language and format for a sign summarizing the prohibitions in sections 9 and 10 of this act and make the language and format available to licensees and registrants under chapter 18.64 RCW, for voluntary use in their places of business to inform customers and employees of the prohibitions. Nothing in this section requires the department of health to provide licensees or registrants with copies of signs, or any licensee or registrant to use the specific language or format prepared by the department under this subsection.

NEW SECTION. **Sec. 15.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

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