

# FINAL BILL REPORT

## E2SHB 2961

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Synopsis as Enacted

**Brief Description:** Establishing a statewide electronic sales tracking system for the nonprescription sales of ephedrine, pseudoephedrine, and phenylpropanolamine.

**Sponsors:** House Committee on Health & Human Services Appropriations (originally sponsored by Representatives Campbell, Hurst, Morrell, Kelley and Ormsby).

**House Committee on Health Care & Wellness**  
**House Committee on Health & Human Services Appropriations**  
**Senate Committee on Health & Long-Term Care**

### **Background:**

#### Restrictions on the Sale of Methamphetamine Precursors.

Methamphetamine is a highly addictive stimulant that affects the central nervous system. Certain drugs that may be purchased without prescription, so-called "methamphetamine precursors," may be used to manufacture methamphetamine illegally; e.g., ephedrine, pseudoephedrine, or phenylpropanolamine. There are, therefore, several restrictions on the purchase and sale of methamphetamine precursors. These restrictions include:

- a ban on selling methamphetamine precursors to persons under the age of 18;
- a ban on selling methamphetamine precursors unless the purchaser presents photographic identification;
- a requirement that products containing methamphetamine precursors be kept in a central location not accessible to customers without assistance; and
- a cap on a seller's total sales of methamphetamine precursors if the seller previously acquired methamphetamine precursors in a suspicious transaction.

In addition, there are federal and state restrictions on the amount of methamphetamine precursors that may be sold to individual customers. The federal Combat Methamphetamine Epidemic Act of 2005 (CMEA) imposes a daily sales limit of 3.6 grams per purchaser and prohibits a purchaser from buying more than nine grams during a 30 day period. In Washington, the daily sales limit is two packages with no more than three grams per package; i.e., six grams per day. A person may not possess more than 15 grams of methamphetamine precursors at a time.

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*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.*

### Electronically Tracking Methamphetamine Precursor Sales.

In 2005 the Legislature created a pilot project to determine the efficacy of requiring merchants to maintain electronic logs of methamphetamine precursor purchases. The Board of Pharmacy was required to convene a work group to evaluate the data collected during the pilot project. The work group's report, issued in 2007, found that retail transaction logs are an effective means of restricting access to methamphetamine precursors and recommended an electronic point-of-sale data collection system for real-time transmission of information.

The CMEA requires sellers of methamphetamine precursors to maintain a written or electronic logbook containing the quantities of the products sold, the names of the products sold, the names and addresses of purchasers, and dates and times of sales. State and local law enforcement agencies are authorized to access the logbooks. The logbook may not be used for any purpose other than to comply with federal law or to facilitate a product recall.

#### **Summary:**

#### Restrictions on the Sale of Methamphetamine Precursors.

Methamphetamine precursors must be placed either behind a counter where the public is not permitted or in a locked display case where customers must ask employees for assistance to gain access. A customer must electronically or manually sign a record of any transaction in which he or she purchased methamphetamine precursors. The record must contain the name and address of the purchaser, the date and time of the sale, the name and the initials of the person conducting the transaction, the name of the product sold, and the total quantity in grams of the precursors being sold.

The daily sales limit for methamphetamine precursors is changed to reflect federal law. A merchant may not sell more than 3.6 grams of methamphetamine precursors to a purchaser in a single day or more than nine grams per purchaser in a 30-day period. Likewise, a purchaser may not buy more than 3.6 grams of methamphetamine precursors in a single day or more than nine grams in a 30-day period.

#### Electronically Tracking Methamphetamine Precursor Sales.

The Board of Pharmacy (Board) must implement a real-time electronic sales tracking system to monitor the non-prescription sale of products containing methamphetamine precursors. The system must be available without cost for accessing the system to the state or retailers. The Board may enter into a public-private partnership to make the system available. The Board may not raise licensing or registration fees to fund the rule making or implementation of the system. The Board must adopt rules regarding the privacy of the purchaser and any public or law enforcement records submitted to the tracking system consistent with federal law.

The electronic sales tracking system must contain the following elements:

- the capability to generate a stop sale alert, which is a notification that completion of the sale would result in the seller or purchaser violating the quantity limits for methamphetamine precursors; and

- an override function for use by a dispenser of methamphetamine precursors who has a reasonable fear of imminent bodily harm. Each instance in which the override function is utilized must be logged by the system.

The records in the electronic tracking system are confidential and only for the use of the seller, except that:

- the records must be provided to a court when lawfully required;
- the records must be open to inspection by the Board;
- the records may be used to track whether a person has violated the methamphetamine precursor purchase limits or to generate a stop sale alert; and
- the records must be available to any general authority Washington peace officer or a federal law enforcement officer in accordance with rules adopted by the Board regarding the privacy of the purchaser of methamphetamine precursors and law enforcement access to the records submitted to the tracking system consistent with federal law.

Beginning July 1, 2011, or the day the system is available, whichever is later, a seller (i.e., a pharmacy, shopkeeper, or itinerant vendor) of non-prescription methamphetamine precursors must submit the required information to the system before completing a sale. The seller may not complete the sale if the system generates a stop sale alert, unless he or she is in reasonable fear of imminent bodily harm. If the seller is unable to use the system due to a mechanical or electronic failure, he or she must maintain a written log or alternative electronic recordkeeping mechanism until the mechanical or electronic failure is resolved.

A seller's use of the electronic sales tracking system must be without cost for accessing the system. A seller may withdraw from participation in the system if the system is no longer being furnished without cost for accessing the system. If the seller withdraws, he or she must maintain alternate records. "Cost for accessing the system" is defined to include costs relating to access to the web-based electronic sales tracking software, the web-based software known as Software as a Service, training, and technical support. "Cost for accessing the system" does not include costs relating to Internet access, hardware, or other equipment.

A seller participating in the system is not liable for civil damages arising from:

- any act or omission connected with the seller's participation, except for acts or omissions constituting gross negligence or willful or wanton misconduct; and
- a data breach proximately caused by a failure on the part of the tracking system to take reasonable care through the use of standard levels of encryption.

A seller may submit a written request to the Board for an exemption from the electronic sales tracking system. The request must state the reasons for the exemption. The Board may grant the exemption for good cause, which includes situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive. In no case may an exemption exceed 180 days, although the Board may grant multiple exemptions if there is significant hardship. If an exemption is granted, the seller must maintain a logbook in hardcopy form and must require the purchaser to submit the same information prior to the completion of the sale as would be required if the seller was participating in the tracking system. The logbook must be available for inspection by law enforcement or the Board during normal business hours in accordance with the rules adopted by the Board.

**Votes on Final Passage:**

House	74	21	
Senate	46	1	(Senate amended)
House	84	13	(House concurred)

**Effective:** June 10, 2010