

SHB 2512 - S AMD TO S COMM AMD (S4838.1) **188**

By Senator Keiser

1 On page 2, after line 15, insert "**Sec. 2.** RCW 69.50.101 and
2 2010 c 177 s 1 are each amended to read as follows:

3 Unless the context clearly requires otherwise, definitions of
4 terms shall be as indicated where used in this chapter:

5 (a) "Administer" means to apply a controlled substance, whether by
6 injection, inhalation, ingestion, or any other means, directly to the
7 body of a patient or research subject by:

8 (1) a practitioner authorized to prescribe (or, by the
9 practitioner's authorized agent); or

10 (2) the patient or research subject at the direction and in the
11 presence of the practitioner.

12 (b) "Agent" means an authorized person who acts on behalf of or at
13 the direction of a manufacturer, distributor, or dispenser. It does
14 not include a common or contract carrier, public warehouseperson, or
15 employee of the carrier or warehouseperson.

16 (c) "Board" means the state board of pharmacy.

17 (d) "Controlled substance" means a drug, substance, or immediate
18 precursor included in Schedules I through V as set forth in federal or
19 state laws, or federal or board rules.

20 (e)(1) "Controlled substance analog" means a substance the
21 chemical structure of which is substantially similar to the chemical
22 structure of a controlled substance in Schedule I or II and:

23 (i) that has a stimulant, depressant, or hallucinogenic effect on
24 the central nervous system substantially similar to the stimulant,
25 depressant, or hallucinogenic effect on the central nervous system of
26 a controlled substance included in Schedule I or II; or

27

1 (ii) with respect to a particular individual, that the individual
2 represents or intends to have a stimulant, depressant, or
3 hallucinogenic effect on the central nervous system substantially
4 similar to the stimulant, depressant, or hallucinogenic effect on the
5 central nervous system of a controlled substance included in Schedule
6 I or II.

7 (2) The term does not include:

8 (i) a controlled substance;

9 (ii) a substance for which there is an approved new drug
10 application;

11 (iii) a substance with respect to which an exemption is in effect
12 for investigational use by a particular person under Section 505 of
13 the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the
14 extent conduct with respect to the substance is pursuant to the
15 exemption; or

16 (iv) any substance to the extent not intended for human
17 consumption before an exemption takes effect with respect to the
18 substance.

19 (f) "Deliver" or "delivery," means the actual or constructive
20 transfer from one person to another of a substance, whether or not
21 there is an agency relationship.

22 (g) "Department" means the department of health.

23 (h) "Dispense" means the interpretation of a prescription or order
24 for a controlled substance and, pursuant to that prescription or
25 order, the proper selection, measuring, compounding, labeling, or
26 packaging necessary to prepare that prescription or order for
27 delivery.

28 (i) "Dispenser" means a practitioner who dispenses.

29 (j) "Distribute" means to deliver other than by administering or
30 dispensing a controlled substance.

31 (k) "Distributor" means a person who distributes.

32 (l) "Drug" means (1) a controlled substance recognized as a drug
33 in the official United States pharmacopoeia/national formulary or the
34 official homeopathic pharmacopoeia of the United States, or any

1 supplement to them; (2) controlled substances intended for use in the
2 diagnosis, cure, mitigation, treatment, or prevention of disease in
3 individuals or animals; (3) controlled substances (other than food)
4 intended to affect the structure or any function of the body of
5 individuals or animals; and (4) controlled substances intended for use
6 as a component of any article specified in (1), (2), or (3) of this
7 subsection. The term does not include devices or their components,
8 parts, or accessories.

9 (m) "Drug enforcement administration" means the drug enforcement
10 administration in the United States Department of Justice, or its
11 successor agency.

12 (n) "Immediate precursor" means a substance:

13 (1) that the state board of pharmacy has found to be and by rule
14 designates as being the principal compound commonly used, or produced
15 primarily for use, in the manufacture of a controlled substance;

16 (2) that is an immediate chemical intermediary used or likely to
17 be used in the manufacture of a controlled substance; and

18 (3) the control of which is necessary to prevent, curtail, or
19 limit the manufacture of the controlled substance.

20 (o) "Isomer" means an optical isomer, but in ((RCW
21 ~~69.50.101(r)(5)~~)) subsection (r)(5) of this section, RCW 69.50.204(a)
22 (12) and (34), and 69.50.206(b)(4), the term includes any geometrical
23 isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term
24 includes any positional isomer; and in RCW 69.50.204(a)(35),
25 69.50.204(c), and 69.50.208(a) the term includes any positional or
26 geometric isomer.

27 (p) "Manufacture" means the production, preparation, propagation,
28 compounding, conversion, or processing of a controlled substance,
29 either directly or indirectly or by extraction from substances of
30 natural origin, or independently by means of chemical synthesis, or by
31 a combination of extraction and chemical synthesis, and includes any
32 packaging or repackaging of the substance or labeling or relabeling of
33 its container. The term does not include the preparation,
34

1 compounding, packaging, repackaging, labeling, or relabeling of a
2 controlled substance:

3 (1) by a practitioner as an incident to the practitioner's
4 administering or dispensing of a controlled substance in the course of
5 the practitioner's professional practice; or

6 (2) by a practitioner, or by the practitioner's authorized agent
7 under the practitioner's supervision, for the purpose of, or as an
8 incident to, research, teaching, or chemical analysis and not for
9 sale.

10 (q) "Marijuana" or "marihuana" means all parts of the plant
11 Cannabis, whether growing or not; the seeds thereof; the resin
12 extracted from any part of the plant; and every compound, manufacture,
13 salt, derivative, mixture, or preparation of the plant, its seeds or
14 resin. The term does not include the mature stalks of the plant,
15 fiber produced from the stalks, oil or cake made from the seeds of the
16 plant, any other compound, manufacture, salt, derivative, mixture, or
17 preparation of the mature stalks (except the resin extracted
18 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
19 which is incapable of germination.

20 (r) "Narcotic drug" means any of the following, whether produced
21 directly or indirectly by extraction from substances of vegetable
22 origin, or independently by means of chemical synthesis, or by a
23 combination of extraction and chemical synthesis:

24 (1) Opium, opium derivative, and any derivative of opium or opium
25 derivative, including their salts, isomers, and salts of isomers,
26 whenever the existence of the salts, isomers, and salts of isomers is
27 possible within the specific chemical designation. The term does not
28 include the isoquinoline alkaloids of opium.

29 (2) Synthetic opiate and any derivative of synthetic opiate,
30 including their isomers, esters, ethers, salts, and salts of isomers,
31 esters, and ethers, whenever the existence of the isomers, esters,
32 ethers, and salts is possible within the specific chemical
33 designation.

34 (3) Poppy straw and concentrate of poppy straw.

1 (4) Coca leaves, except coca leaves and extracts of coca leaves
2 from which cocaine, ecgonine, and derivatives or ecgonine or their
3 salts have been removed.

4 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

5 (6) Cocaine base.

6 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
7 thereof.

8 (8) Any compound, mixture, or preparation containing any quantity
9 of any substance referred to in subparagraphs (1) through (7).

10 (s) "Opiate" means any substance having an addiction-forming or
11 addiction-sustaining liability similar to morphine or being capable of
12 conversion into a drug having addiction-forming or addiction-
13 sustaining liability. The term includes opium, substances derived
14 from opium (opium derivatives), and synthetic opiates. The term does
15 not include, unless specifically designated as controlled under RCW
16 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
17 and its salts (dextromethorphan). The term includes the racemic and
18 levorotatory forms of dextromethorphan.

19 (t) "Opium poppy" means the plant of the species *Papaver*
20 *somniferum* L., except its seeds.

21 (u) "Person" means individual, corporation, business trust,
22 estate, trust, partnership, association, joint venture, government,
23 governmental subdivision or agency, or any other legal or commercial
24 entity.

25 (v) "Poppy straw" means all parts, except the seeds, of the opium
26 poppy, after mowing.

27 (w) "Practitioner" means:

28 (1) A physician under chapter 18.71 RCW; a physician assistant
29 under chapter 18.71A RCW; an osteopathic physician and surgeon under
30 chapter 18.57 RCW; an osteopathic physician assistant under chapter
31 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
32 limitations in RCW 18.57A.040; an optometrist licensed under chapter
33 18.53 RCW who is certified by the optometry board under RCW 18.53.010
34 subject to any limitations in RCW 18.53.010; a dentist under chapter

1 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
2 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
3 registered nurse practitioner, or licensed practical nurse under
4 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
5 who is licensed under RCW 18.36A.030 subject to any limitations in RCW
6 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
7 investigator under this chapter, licensed, registered or otherwise
8 permitted insofar as is consistent with those licensing laws to
9 distribute, dispense, conduct research with respect to or administer a
10 controlled substance in the course of their professional practice or
11 research in this state.

12 (2) A pharmacy, hospital or other institution licensed,
13 registered, or otherwise permitted to distribute, dispense, conduct
14 research with respect to or to administer a controlled substance in
15 the course of professional practice or research in this state.

16 (3) A physician licensed to practice medicine and surgery, a
17 physician licensed to practice osteopathic medicine and surgery, a
18 dentist licensed to practice dentistry, a podiatric physician and
19 surgeon licensed to practice podiatric medicine and surgery, or a
20 veterinarian licensed to practice veterinary medicine in any state of
21 the United States.

22 (x) "Prescription" means an order for controlled substances issued
23 by a practitioner duly authorized by law or rule in the state of
24 Washington to prescribe controlled substances within the scope of his
25 or her professional practice for a legitimate medical purpose.

26 (y) "Production" includes the manufacturing, planting,
27 cultivating, growing, or harvesting of a controlled substance.

28 (z) "Secretary" means the secretary of health or the secretary's
29 designee.

30 (aa) "State," unless the context otherwise requires, means a state
31 of the United States, the District of Columbia, the Commonwealth of
32 Puerto Rico, or a territory or insular possession subject to the
33 jurisdiction of the United States.

34

1 (bb) "Ultimate user" means an individual who lawfully possesses a
2 controlled substance for the individual's own use or for the use of a
3 member of the individual's household or for administering to an animal
4 owned by the individual or by a member of the individual's household.

5 ~~((cc) "Electronic communication of prescription information"~~
6 ~~means the communication of prescription information by computer, or~~
7 ~~the transmission of an exact visual image of a prescription by~~
8 ~~facsimile, or other electronic means for original prescription~~
9 ~~information or prescription refill information for a Schedule III V~~
10 ~~controlled substance between an authorized practitioner and a pharmacy~~
11 ~~or the transfer of prescription information for a controlled substance~~
12 ~~from one pharmacy to another pharmacy.))~~

13
14 **Sec. 1.** RCW 69.50.308 and 2001 c 248 s 1 are each amended to read
15 as follows:

16 (a) A controlled substance may be dispensed only as provided in
17 this section, except that subsections (b) through (d) of this section
18 shall not apply to electronic communication of prescription
19 information allowed under RCW 69.50.312.

20 (b) Except when dispensed directly by a practitioner authorized to
21 prescribe or administer a controlled substance, other than a pharmacy,
22 to an ultimate user, a substance included in Schedule II may not be
23 dispensed without the written prescription of a practitioner.

24 (1) Schedule II narcotic substances may be dispensed by a pharmacy
25 pursuant to a facsimile prescription under the following
26 circumstances:

27 (i) The facsimile prescription is transmitted by a practitioner to
28 the pharmacy; and

29 (ii) The facsimile prescription is for a patient in a long-term
30 care facility. "Long-term care facility" means nursing homes licensed
31 under chapter 18.51 RCW, boarding homes licensed under chapter 18.20
32 RCW, and adult family homes licensed under chapter 70.128 RCW; or

33 (iii) The facsimile prescription is for a patient of a hospice
34 program certified or paid for by medicare under Title XVIII; or

1 (iv) The facsimile prescription is for a patient of a hospice
2 program licensed by the state; and

3 (v) The practitioner or the practitioner's agent notes on the
4 facsimile prescription that the patient is a long-term care or hospice
5 patient.

6 (2) Injectable Schedule II narcotic substances that are to be
7 compounded for patient use may be dispensed by a pharmacy pursuant to
8 a facsimile prescription if the facsimile prescription is transmitted
9 by a practitioner to the pharmacy.

10 (3) Under (1) and (2) of this subsection the facsimile
11 prescription shall serve as the original prescription and shall be
12 maintained as other Schedule II narcotic substances prescriptions.

13 (c) In emergency situations, as defined by rule of the state board
14 of pharmacy, a substance included in Schedule II may be dispensed upon
15 oral prescription of a practitioner, reduced promptly to writing and
16 filed by the pharmacy. Prescriptions shall be retained in conformity
17 with the requirements of RCW 69.50.306. (~~(A prescription for a~~
18 ~~substance included in Schedule II may not be refilled.)~~)

19 (d) Except when dispensed directly by a practitioner authorized to
20 prescribe or administer a controlled substance, other than a pharmacy,
21 to an ultimate user, a substance included in Schedule III or IV, which
22 is a prescription drug as determined under RCW 69.04.560, may not be
23 dispensed without a written or oral prescription of a practitioner.
24 Any oral prescription must be promptly reduced to writing. (~~The~~)

25 (e) A prescription for a substance included in Schedule II may not be
26 refilled.

27 (f) Schedule III or IV prescriptions shall not be filled or
28 refilled more than six months after the date thereof or be refilled
29 more than five times, unless renewed by the practitioner.

30 (~~(e)~~) (g) A valid prescription or lawful order of a
31 practitioner, in order to be effective in legalizing the possession of
32 controlled substances, must be issued in good faith for a legitimate
33 medical purpose by one authorized to prescribe the use of such
34 controlled substance. An order purporting to be a prescription not in

1 the course of professional treatment is not a valid prescription or
2 lawful order of a practitioner within the meaning and intent of this
3 chapter; and the person who knows or should know that the person is
4 filling such an order, as well as the person issuing it, can be
5 charged with a violation of this chapter.

6 ~~((f))~~ (h) A substance included in Schedule V must be distributed
7 or dispensed only for a medical purpose.

8 ~~((g))~~ (i) A practitioner may dispense or deliver a controlled
9 substance to or for an individual or animal only for medical treatment
10 or authorized research in the ordinary course of that practitioner's
11 profession. Medical treatment includes dispensing or administering a
12 narcotic drug for pain, including intractable pain.

13 ~~((h))~~ (j) No administrative sanction, or civil or criminal
14 liability, authorized or created by this chapter may be imposed on a
15 pharmacist for action taken in reliance on a reasonable belief that an
16 order purporting to be a prescription was issued by a practitioner in
17 the usual course of professional treatment or in authorized research.

18 ~~((i))~~ (k) An individual practitioner may not dispense a
19 substance included in Schedule II, III, or IV for that individual
20 practitioner's personal use.

21
22 **Sec. 2.** RCW 69.50.312 and 1998 c 222 s 4 are each amended to read
23 as follows:

24 (1) Information concerning an original prescription for a
25 controlled substance included in Schedules II through V, or
26 information concerning a prescription refill for a controlled
27 substance included in Schedules III through V may be electronically
28 communicated to a pharmacy of the patient's choice pursuant to the
29 provisions of this chapter if the electronically communicated
30 prescription information complies with the following:

31 (a) Electronically communicated prescription information must
32 comply with all applicable statutes and rules regarding the form,
33 content, recordkeeping, and processing of a prescription for a legend
34 drug;

1 (b) The system used for transmitting electronically communicated
2 prescription information and the system used for receiving
3 electronically communicated prescription information must be approved
4 by the board and meet the requirements for electronic orders and
5 prescriptions set forth in Title 21 C.F.R. Parts 1300, 1304, 1306, and
6 1311 in effect on the effective date of this section if used to
7 transmit prescription information for controlled substances included
8 in Schedules II through V. This subsection does not apply to
9 currently used facsimile equipment transmitting an exact visual image
10 of the prescription. The board shall maintain and provide, upon
11 request, a list of systems used for electronically communicating
12 prescription information currently approved by the board;

13 (c) An explicit opportunity for practitioners must be made to
14 indicate their preference on whether a therapeutically equivalent
15 generic drug may be substituted;

16 (d) Prescription drug orders are confidential health information,
17 and may be released only to the patient or the patient's authorized
18 representative, the prescriber or other authorized practitioner then
19 caring for the patient, or other persons specifically authorized by
20 law to receive such information;

21 (e) To maintain confidentiality of prescription records, the
22 electronic system shall have adequate security and systems safeguards
23 designed to prevent and detect unauthorized access, modification, or
24 manipulation of these records. The pharmacist in charge shall
25 establish or verify the existence of policies and procedures which
26 ensure the integrity and confidentiality of prescription information
27 transmitted to the pharmacy by electronic means. All managers,
28 employees, and agents of the pharmacy are required to read, sign, and
29 comply with the established policies and procedures; and

30 (f) The pharmacist shall exercise professional judgment regarding
31 the accuracy, validity, and authenticity of the prescription drug
32 order received by way of electronic transmission, consistent with
33 federal and state laws and rules and guidelines of the board.

34 (2) The board may adopt rules implementing this section."

1 On page 2, line 16 after "after" strike everything through "RCW
2 69.41.030" on line 17 and insert "Relating" strike the remainder of
3 the title and insert "to the prescribing of drugs; and amending RCW
4 69.50.101, 69.50.308, and 69.50.312, and reenacting and amending RCW
5 69.41.030."

6 EFFECT: Authorizes the electronic communication of
prescription information for controlled substances.

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