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**H. B. 4170**

(By Delegates Howell, Walters, Frich, Eldridge, Ambler, Ellington, Barill, Lynch, Kinsey, Moyer and Reynolds

[Introduced January 14, 2014; referred to the Committee on Health and Human Resources then the Judiciary.]

A BILL to amend and reenact §60A-10-4 of the Code of West Virginia, 1931, as amended, relating to requiring a person convicted of a prior felony drug offense to have a valid prescription to purchase ephedrine, pseudoephedrine or phenylpropanolamine.

*Be it enacted by the Legislature of West Virginia:*

That §60A-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

**§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.**

(a) A pharmacy may not sell, transfer or dispense to the same person, and a person may not purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a thirty-day period or more than forty-eight grams annually of

1 ephedrine, pseudoephedrine or phenylpropanolamine without a  
2 prescription. The limits shall apply to the total amount of  
3 ephedrine, pseudoephedrine and phenylpropanolamine contained in the  
4 products, and not the overall weight of the products.

5 (1) Any person who or knowingly purchases, receives or  
6 otherwise possesses more than seven and two-tenths grams in a  
7 thirty-day period of ephedrine, pseudoephedrine or  
8 phenylpropanolamine in any form without a prescription is guilty of  
9 a misdemeanor and, upon conviction, shall be confined in a jail for  
10 not more than one year, fined not more than \$1,000, or both fined  
11 and confined.

12 (2) Any pharmacy, wholesaler or other entity operating the  
13 retail establishment which sells, transfers or dispenses a product  
14 in violation of this section is guilty of a misdemeanor and, upon  
15 conviction, shall be fined not more than \$1,000 for the first  
16 offense, or more than \$10,000 for each subsequent offense.

17 (b) Notwithstanding the provisions of subdivision (a)(1) of  
18 this section, any person convicted of a second or subsequent  
19 violation of the provisions of said subdivision or a statute or  
20 ordinance of the United States or another state which contains the  
21 same essential elements is guilty of a felony and, upon conviction,  
22 shall be imprisoned in a state correctional facility for not less  
23 than one nor more than five years, fined not more than \$25,000, or  
24 both imprisoned and fined.

1        (c) Notwithstanding any provision to the contrary, a person  
2 convicted of a prior felony drug offense must have a valid  
3 prescription to purchase ephedrine, pseudoephedrine or  
4 phenylpropanolamine. Any person violating the provisions of this  
5 subsection is guilty of a misdemeanor and, upon conviction, shall  
6 be confined in a jail for not more than one year, fined not more  
7 than \$1,000, or both fined and confined. Any person convicted of a  
8 second or subsequent violation of the provisions of this subsection  
9 is guilty of a felony and, upon conviction, shall be imprisoned in  
10 a state correctional facility for not less than one nor more than  
11 five years, fined not more than \$25,000, or both imprisoned and  
12 fined. The Board of Pharmacy shall propose rules for legislative  
13 approval in accordance with the provisions of article three,  
14 chapter twenty-nine-a of this code to implement the provisions of  
15 this subsection.

16        (c) The provisions of subsection (a) of this section shall not  
17 apply to:

18        (1) Products dispensed pursuant to a valid prescription;

19        (2) Drug products which are for pediatric use primarily  
20 intended for administration to children under the age of twelve;

21        (3) Drug products containing ephedrine, pseudoephedrine or  
22 phenylpropanolamine, their salts or optical isomers or salts of  
23 optical isomers or other designated precursor which have been  
24 determined by the Board of Pharmacy to be in a form which is not

1 feasible for being used for the manufacture of methamphetamine; or

2 (4) Persons lawfully possessing drug products in their  
3 capacities as distributors, wholesalers, manufacturers,  
4 pharmacists, pharmacy interns, pharmacy technicians, or health care  
5 professionals.

6 (d) Notwithstanding any provision of this code to the  
7 contrary, any person who knowingly possesses any amount of  
8 ephedrine, pseudoephedrine, phenylpropanolamine or other designated  
9 precursor with the intent to use it in the manufacture of  
10 methamphetamine or who knowingly possesses a substance containing  
11 ephedrine, pseudoephedrine or phenylpropanolamine or their salts,  
12 optical isomers or salts of optical isomers in a state or form  
13 which is, or has been altered or converted from the state or form  
14 in which these chemicals are, or were, commercially distributed is  
15 guilty of a felony and, upon conviction, shall be imprisoned in a  
16 state correctional facility for not less than two nor more than ten  
17 years, fined not more than \$25,000, or both imprisoned and fined.

18 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor  
19 of drug products containing ephedrine, pseudoephedrine,  
20 phenylpropanolamine, their salts or optical isomers or salts of  
21 optical isomers or other designated precursor shall obtain a  
22 registration annually from the State Board of Pharmacy as described  
23 in section six of this article. Any such pharmacy, wholesaler,  
24 manufacturer or distributor shall keep complete records of all

1 sales and transactions as provided in section eight of this  
2 article. The records shall be gathered and maintained pursuant to  
3 legislative rule promulgated by the Board of Pharmacy.

4 (2) Any drug products possessed without a registration as  
5 provided in this section are subject to forfeiture upon conviction  
6 for a violation of this section.

7 (3) In addition to any administrative penalties provided by  
8 law, any violation of this subsection is a misdemeanor, punishable  
9 upon conviction by a fine in an amount not more than \$10,000.

NOTE: The purpose of this bill is to require a person  
convicted of a prior felony drug offense to have a valid  
prescription to purchase ephedrine, pseudoephedrine or  
phenylpropanolamine.

Strike-throughs indicate language that would be stricken from  
the present law, and underscoring indicates new language that would  
be added.