

1 **H. B. 4486**

2 (By Delegates Ellington and Miller)

3 [Introduced February 12, 2014; referred to the
4 Committee on Health and Human Resources then the
5 Judiciary.]

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10 A BILL to amend and reenact §60A-10-4, §60A-10-6 and §60A-10-7 of
11 the Code of West Virginia, 1931, as amended, all relating to
12 circumstances requiring a prescription to dispense drug
13 products that contain ephedrine, pseudoephedrine,
14 phenylpropanolamine and other precursors of methamphetamine as
15 an active ingredient; exempting wholesalers from certain
16 requirements of the United States Drug Enforcement
17 Administration relating to storage, reporting, record keeping
18 or physical security control requirements for controlled
19 substances containing ephedrine, pseudoephedrine or
20 phenylpropanolamine; adding affirmative defenses; and
21 providing penalties.

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

23 That §60A-10-4, §60A-10-6 and §60A-10-7 of the Code of West
24 Virginia, 1931, as amended, be amended and reenacted, all to read

1 as follows:

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

3 **§60A-10-4. Purchase, receipt, acquisition and possession of**
4 **substances to be used as precursor to manufacture**
5 **of methamphetamine or another controlled**
6 **substance; offenses; exceptions; penalties.**

7 (a) A pharmacy may not sell, transfer or dispense to the same
8 person, and a person may not purchase more than three and
9 six-tenths grams per day, more than seven and two-tenths grams in
10 a thirty-day period or more than forty-eight grams annually of
11 ephedrine, pseudoephedrine or phenylpropanolamine without a
12 prescription. The limits shall apply to the total amount of
13 ephedrine, pseudoephedrine and phenylpropanolamine contained in the
14 products, and not the overall weight of the products.

15 (1) Any person who ~~or knowingly purchases, receives or~~
16 ~~otherwise possesses more than seven and two-tenths grams in a~~
17 ~~thirty-day period of ephedrine, pseudoephedrine or~~
18 ~~phenylpropanolamine in any form without a prescription is guilty of~~
19 ~~a misdemeanor and, upon conviction, shall be confined in a jail for~~
20 ~~not more than one year, fined not more than \$1,000, or both fined~~
21 ~~and confined.~~ within any thirty-day period knowingly purchases,
22 receives or otherwise possesses more than three packages of a drug
23 product containing as its single active ingredient ephedrine,

1 pseudoephedrine or phenylpropanolamine or more than nine grams of
2 ephedrine, pseudoephedrine or phenylpropanolamine in any form shall
3 be guilty of a misdemeanor and, upon conviction, shall be confined
4 in a jail for not more than one year, fined not more than \$1,000,
5 or both.

6 (2) Any person who knowingly purchases, receives or otherwise
7 possesses ephedrine, pseudoephedrine or phenylpropanolamine in any
8 form with the intent to transfer the substance to someone that the
9 person knows or should know will use the substance to manufacture
10 methamphetamine is guilty of a misdemeanor and, upon conviction,
11 shall be confined in a jail for not more than one year, fined not
12 more than \$1,000, or both fined and confined.

13 (3) A person is required to obtain a valid prescription prior
14 to obtaining products containing ephedrine, pseudoephedrine or
15 phenylpropanolamine if that person has been:

16 (A) Convicted of an offense which includes the use, possession
17 or distribution of a drug as an element of the offense;

18 (B) Convicted of a violation of this section, or an equivalent
19 statute in another jurisdiction; or

20 (C) Uses a drug product containing ephedrine, pseudoephedrine
21 or phenylpropanolamine as an active ingredient for two hundred
22 seventy or more days per year.

23 (4) Any pharmacy, wholesaler or other entity operating the
24 retail establishment which sells, transfers or dispenses a product

1 in violation of this section is guilty of a misdemeanor and, upon
2 conviction, shall be fined not more than \$1,000 for the first
3 offense, or more than \$10,000 for each subsequent offense.

4 (5) Beginning on January 1, 2015, the electronic transmission
5 of the information required to be reported in this subsection of
6 this section on persons who have been convicted of an offense which
7 includes the use, possession or distribution of a drug as an
8 element of the offense; or convicted of a violation of this
9 section, or an equivalent statute in another jurisdiction, shall be
10 reported to the Multi-State Real-Time Tracking System described in
11 section six of article ten of chapter sixty of this code, and shall
12 be made in real time at the time of the transaction.

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

21 (c) The provisions of subsection (a) of this section shall not
22 apply to:

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

24 (2) Drug products which are for pediatric use primarily

1 intended for administration to children under the age of twelve;

2 (3) Drug products containing ephedrine, pseudoephedrine or
3 phenylpropanolamine, their salts or optical isomers or salts of
4 optical isomers or other designated precursor which have been
5 determined by the Board of Pharmacy to be in a form which is not
6 feasible for being used for the manufacture of methamphetamine; or

7 (4) Persons lawfully possessing drug products in their
8 capacities as distributors, wholesalers, manufacturers,
9 pharmacists, pharmacy interns, pharmacy technicians, or health care
10 professionals.

11 (d) Notwithstanding any provision of this code to the
12 contrary, any person who knowingly possesses any amount of
13 ephedrine, pseudoephedrine, phenylpropanolamine or other designated
14 precursor with the intent to use it in the manufacture of
15 methamphetamine, or any person who knowingly compensates, hires or
16 provides other incentives for another person to purchase, obtain or
17 transfer any amount of ephedrine, pseudoephedrine,
18 phenylpropanolamine or other designated precursor with the intent
19 to use it in the manufacture of methamphetamine, or who knowingly
20 possesses a substance containing ephedrine, pseudoephedrine or
21 phenylpropanolamine or their salts, optical isomers or salts of
22 optical isomers in a state or form which is, or has been altered or
23 converted from the state or form in which these chemicals are, or
24 were, commercially distributed is guilty of a felony and, upon

1 conviction, shall be imprisoned in a state correctional facility
2 for not less than two nor more than ten years, fined not more than
3 \$25,000, or both imprisoned and fined.

4 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor
5 of drug products containing ephedrine, pseudoephedrine,
6 phenylpropanolamine, their salts or optical isomers or salts of
7 optical isomers or other designated precursor shall obtain a
8 registration annually from the State Board of Pharmacy as described
9 in section six of this article. ~~Any such pharmacy, wholesaler,
10 manufacturer or distributor shall keep complete records of all
11 sales and transactions as provided in section eight of this
12 article. The records shall be gathered and maintained pursuant to
13 legislative rule promulgated by the Board of Pharmacy.~~

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

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

20 **§60A-10-6. Registration to sell, manufacture or distribute**
21 **products; rule-making authority.**

22 The State Board of Pharmacy shall propose rules for
23 legislative approval in accordance with the provisions of article
24 three, chapter twenty-nine-a of this code to require that every

1 wholesaler, manufacturer or distributor of any drug product
2 containing as ~~their single~~ an active ingredient ephedrine or
3 pseudoephedrine or a substance identified on the supplemental list
4 provided ~~for~~ in section seven of this article shall obtain a
5 registration and permit issued by the State Board of Pharmacy to
6 sell, distribute or transfer the product containing as their single
7 active ingredient ephedrine, pseudoephedrine or
8 phenylpropanolamine.

9 **§60A-10-7. Restricted products; rule-making authority.**

10 (a) ~~On or before July 1, 2005,~~ The Board of Pharmacy shall
11 ~~promulgate~~ propose emergency and legislative rules pursuant to the
12 provision of article three, chapter twenty-nine-a of this code to
13 implement a program wherein the Board of Pharmacy shall consult
14 with the Superintendent of the State Police in identifying drug
15 products which are a designated precursor, in addition to those
16 that contain ephedrine, pseudoephedrine or phenylpropanolamine,
17 that are commonly being used in the production and distribution of
18 methamphetamine. Those drug products which the Superintendent of
19 the State Police ~~have~~ has demonstrated by empirical evidence are
20 commonly used in the manufacture of methamphetamine shall be added
21 to a supplemental list and ~~shall be~~ subject to all of the
22 restrictions of this article. ~~These~~ Rules established pursuant to
23 this section shall include:

24 (1) A process whereby pharmacies are made aware of all drug

1 products that contain as an active ingredient, ephedrine,
2 pseudoephedrine and phenylpropanolamine that will be listed as a
3 Schedule V substance; ~~and must be sold, transferred or dispensed~~
4 ~~from behind a pharmacy counter;~~

5 (2) ~~A process whereby pharmacies and retail establishments are~~
6 ~~made aware of additional drug products added to Schedule V that are~~
7 ~~required to be placed behind the pharmacy counter for sale,~~
8 ~~transfer or distribution can be periodically reviewed and updated.~~
9 Wholesale drug distributors licensed by the Board of Pharmacy and
10 registered with, and regulated by, the United States Drug
11 Enforcement Administration are exempt from storage, reporting,
12 record keeping or physical security control requirements for
13 controlled substances containing pseudoephedrine, ephedrine, or
14 phenylpropanolamine.

15 (b) ~~At any time after July 1, 2005, the Board of Pharmacy,~~
16 ~~upon the recommendation of the Superintendent of the State Police,~~
17 ~~shall promulgate emergency and legislative rules pursuant to the~~
18 ~~provision of article three, chapter twenty-nine a of this code to~~
19 ~~implement an updated supplemental list of products containing the~~
20 ~~controlled substances ephedrine, pseudoephedrine or~~
21 ~~phenylpropanolamine as an active ingredient or any other drug used~~
22 ~~as a precursor in the manufacture of methamphetamine, which the~~
23 ~~Superintendent of the State Police has demonstrated by empirical~~
24 ~~evidence is being used in the manufacture of methamphetamine. This~~

1 ~~listing process shall comport with the requirements of subsection~~
2 ~~(a) of this section.~~ A process whereby pharmacies are made aware of
3 all drug products that are less than eleven percent of the product
4 can be used to manufacture methamphetamine that contain ephedrine,
5 pseudoephedrine or phenylpropanolamine, and may be sold,
6 transferred or dispensed over the counter.

NOTE: The purpose of this bill is to amend code sections relating to pseudoephedrine so as to require a prescription to dispense drug products that contain ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient. It exempts wholesalers from certain requirements of the United States Drug Enforcement Administration relating to storage, reporting, record keeping or physical security control requirements for controlled substances that contain ephedrine, pseudoephedrine or phenylpropanolamine, and adds affirmative defenses and penalties.

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