

1 **H. B. 4524**

2  
3 (By Delegates Skaff, Eldridge, Reynolds,  
4 Staggers, Campbell, Ireland, Miller, Craig,  
5 Morgan and Arvon)

6 [Introduced February 13, 2014; referred to the  
7 Committee on Health and Human Resources then the  
8 Judiciary.]

**FISCAL  
NOTE**

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §15-14-1 and  
12 §15-14-2; and to amend said code by adding thereto two new  
13 sections, designated §60A-10-5a and §60A-10-5b, all relating  
14 to stopping the sale of ephedrine, pseudoephedrine and  
15 phenylpropanolamine for illicit purposes; creating within the  
16 State Police a methamphetamine registry; requiring the  
17 Superintendent of the State Police to propose rules relating  
18 to the methamphetamine registry; restricting the sale of  
19 ephedrine, pseudoephedrine or phenylpropanolamine to  
20 individuals on the registry; and defining and creating a  
21 penalty for smurfing.

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

23 That the Code of West Virginia, 1931, as amended, be amended  
24 by adding thereto a new article, designated §15-14-1 and §15-14-2;  
25 and that said code be amended by adding thereto two new sections,

1 designated §60A-10-5a and §60A-10-5b, all to read as follows:

2 **CHAPTER 15. PUBLIC SAFETY.**

3 **ARTICLE 14. REGISTRY OF CONVICTIONS FOR METHAMPHETAMINE OFFENSES.**

4 **§15-14-1. Registry of convictions for methamphetamine offenses;**  
5 **required information; procedures.**

6 (a) There is created within the Criminal Identification Bureau  
7 of the West Virginia State Police a methamphetamine registry of  
8 persons convicted of a violation of either of the following  
9 provisions of this code:

10 (1) Section four hundred eleven, article four, chapter  
11 sixty-a; and

12 (2) Section four, article ten, chapter sixty-a of this code.

13 (b) The registry shall consist of the person's name, date of  
14 birth, offense or offenses requiring the person's inclusion on the  
15 registry, the conviction date and county of those offenses, and any  
16 other available information the bureau deems important. Under no  
17 circumstance may the registry make available to the public the  
18 person's social security number, driver's license number, or any  
19 other state or federal identification number.

20 **§15-14-2. Reports of certain convictions by prosecuting attorneys;**  
21 **providing website information; superintendent to**  
22 **propose rules.**

23 (a) A prosecuting attorney, upon conviction of a person for

1 violating the provisions of section four hundred eleven, article  
2 four, chapter sixty-a of this code or section four, article ten,  
3 chapter sixty-a of this code, shall report the conviction to the  
4 registry, provided in a form furnished by the bureau for registry  
5 purposes. Reporting procedures and the process for removal from the  
6 registry after ten years shall be developed by the bureau in  
7 conjunction with the West Virginia Prosecuting Attorneys Institute  
8 and the Administrator of the Supreme Court of Appeals.

9 (b) Information relating to convictions prior to the effective  
10 date of this section shall, to the extent feasible and practicable,  
11 be placed on the registry.

12 (c) The registry shall be accessible through a website  
13 maintained under the direction of the State Police.

14 (d) The Superintendent of the State Police shall propose  
15 legislative rules in accordance with the provisions of article  
16 three, chapter twenty-nine-a of this code designed to implement the  
17 provisions of this article.

18 **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

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

20 **§60A-10-5a. Restrictions on the sale to individuals on the**  
21 **registry.**

22 (a) Before completing a sale of a product containing  
23 ephedrine, pseudoephedrine or phenylpropanolamine, an owner or

1 employee of a pharmacy or retail establishment shall, use the  
2 driver's license or a valid government-issued photo identification  
3 showing the date of birth of the person attempting to purchase the  
4 product to electronically submit information on the person to the  
5 National Precursor Log Exchange. The National Precursor Log  
6 Exchange shall in real-time electronically consult the  
7 Methamphetamine Registry information, as supplied by the State  
8 Police, and established under section one, article fourteen,  
9 chapter fifteen of this code.

10 (b) If the person is listed on the Methamphetamine Registry,  
11 the National Precursor Log Exchange shall alert the owner or  
12 employee processing the transaction to not sell to that person.

13 (c) If a pharmacy or retail establishment selling a  
14 nonprescription product containing ephedrine, pseudoephedrine or  
15 phenylpropanolamine experiences mechanical or electronic failure  
16 and is unable to comply with this requirement, the pharmacy or  
17 retail establishment shall follow the same procedure it uses if the  
18 MSRTTS would fail.

19 **§60A-10-5b. Penalties for smurfing.**

20 (a) It is unlawful for any person to knowingly sell, transfer,  
21 distribute or dispense any product containing ephedrine,  
22 pseudoephedrine or phenylpropanolamine, or their salts, isomers or  
23 salts of isomers, if the person knows that the purchaser will use  
24 the product as a precursor to manufacture methamphetamine or

1 another controlled illegal substance or if the person sells,  
2 transfers, distributes or dispenses the product with reckless  
3 disregard as to how the product will be used (smurfing).

4 (b) A violation of this section is a felony punishable by  
5 imprisonment for a term of not more than ten years.

6 (c) Any person who sells, transfers, distributes or dispenses  
7 any product containing ephedrine, pseudoephedrine or  
8 phenylpropanolamine, or their salts, isomers or salts of isomers,  
9 in a negligent manner, with knowledge or reason to know that the  
10 product will be used as a precursor to manufacture methamphetamine  
11 or another controlled illegal substance, or with reckless disregard  
12 as to how the product will be used, is liable for all damages,  
13 whether directly or indirectly caused by the sale, transfer,  
14 distribution, dispensation or furnishing of the product.

15 (1) Damages may include, but are not limited to, any costs of  
16 detecting, investigating and cleaning up or remediating clandestine  
17 or other unlawfully operated or maintained laboratories where  
18 controlled dangerous substances are manufactured, any costs of  
19 prosecuting criminal cases arising from such manufacture, and any  
20 consequential and punitive damages otherwise allowed by law.

21 (2) A civil action to recover damages against persons,  
22 corporations or other entities violating this subsection may be  
23 brought only by the Attorney General, the Superintendent of the  
24 West Virginia State Police or by any district attorney in whose

1 jurisdiction a person may be shown to have committed a violation of  
2 this subsection. Any funds recovered from an action shall be used  
3 for payment or reimbursement of costs arising from investigating or  
4 prosecuting criminal or civil cases involving the manufacture of  
5 controlled dangerous substances, for drug education programs or for  
6 payment or reimbursement of remediating contaminated  
7 methamphetamine laboratory sites.

NOTE: The purpose of this bill is to create within the State Police the Methamphetamine Registry to track those caught purchasing ephedrine, pseudoephedrine or phenylpropanolamine for illicit purposes, and to create a penalty for "smurfing" ephedrine, pseudoephedrine or phenylpropanolamine in behalf of methamphetamine producers.

The language in this bill is new; therefore, it is completely underscored.