

1 **H. B. 3016**

2 (By Delegates Ellington, Householder, Rohrbach, Stansbury, Hill and Westfall)

3 [Originating in Committee on Health and Human Resources on February 24, 2015]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
11 designated §15-12A-1 and §15-12A-2; and to amend and reenact §60A-10-4, §60A-10-6 and
12 §60A-10-7 of said code, all relating to methamphetamine; creating a registry; requiring that
13 certain persons be added to registry; requiring certain drug products be obtained by
14 prescription only; requiring registered persons to obtain to prescription; providing certain
15 discretionary authority to the Board of Pharmacy; increasing criminal penalties; and
16 providing criminal penalties.

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

18 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
19 article, designated §15-12A-1 and §15-12A-2; and that §60A-10-4, §60A-10-6 and §60A-10-7 of
20 said code be amended and reenacted, all to read as follows:

21 **CHAPTER 15. PUBLIC SAFETY.**

22 **ARTICLE 12A. REGISTRY OF CONVICTIONS FOR OPERATING A CLANDESTINE**

1 **DRUG LABORATORY.**

2 **§15-12A-1. Registry of convictions for operating a clandestine drug laboratory and**
3 **methamphetamine offenses; required information; procedures.**

4 (a) The Criminal Identification Bureau of the West Virginia State Police shall input into the
5 Multi-State Real Time Tracking System information relating to a final criminal conviction of a
6 person who was:

7 (1) Convicted of an offense which includes the use, possession or distribution of a drug as
8 an element of the offense; or

9 (2) Convicted of a violation under article ten, chapter sixty-a of this code.

10 (b) The registry shall contain, at a minimum, the following information:

11 (1) The convicted person's full name;

12 (2) The person's date of birth;

13 (3) The conviction date;

14 (4) The person driver's license or identification card number; and

15 (5) Identification of the criminal offense and to the extent possible and the county of
16 conviction.

17 (c) An individual shall be placed on the registry for five years from the date of conviction.

18 (d) The bureau shall contact the MSRTTS to remove a person from the system five years
19 after the date of conviction.

20 (e) If a person believes he or she has been mistakenly blocked from purchasing by the
21 MSRTTS, that person shall contact the bureau. The bureau shall ascertain and verify the identity of
22 the individual and if proper, remove that individual from the MSRTTS.

1 **§15-12A-2. Reports of certain convictions by prosecuting attorneys; providing website**
2 **information; superintendent to propose rules.**

3 **(a) A prosecuting attorney shall report, to the bureau on a form provided by the bureau, a**
4 **person who is:**

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

7 **(B) Convicted of a violation under article ten, chapter sixty-a of this code.**

8 **(b) Reporting procedures shall be developed by the bureau in conjunction with the**
9 **Prosecuting Attorneys' Institute and the Office of the Administrator of the Supreme Court of**
10 **Appeals.**

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

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

13 **§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor**
14 **to manufacture of methamphetamine or another controlled substance; offenses;**
15 **exceptions; penalties.**

16 (a) A pharmacy may not sell, transfer or dispense to the same person, and a person may not
17 purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a
18 thirty-day period or more than forty-eight grams annually of ephedrine, pseudoephedrine or
19 phenylpropanolamine without a prescription. The limits shall apply to the total amount of ephedrine,
20 pseudoephedrine and phenylpropanolamine contained in the products, and not the overall weight of
21 the products.

22 (1) Any person who ~~or knowingly purchases, receives or otherwise possesses more than~~

1 ~~seven and two-tenths grams in a thirty-day period of ephedrine, pseudoephedrine or~~
2 ~~phenylpropanolamine in any form without a prescription is guilty of a misdemeanor and, upon~~
3 ~~conviction, shall be confined in a jail for not more than one year, fined not more than \$1,000, or both~~
4 ~~fined and confined.~~ within any thirty-day period knowingly purchases, receives or otherwise
5 possesses more than three packages of a drug product containing ephedrine, pseudoephedrine or
6 phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or
7 phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be
8 confined in a jail for not more than one year, fined not more than \$1,000, or both.

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

14 (3) A person listed on the registry as provided in article twelve-a, chapter fifteen, is required
15 to obtain a valid prescription prior to obtaining products containing ephedrine, pseudoephedrine or
16 phenylpropanolamine.

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

21 (b) Notwithstanding the provisions of ~~subdivision (a)(1)~~ subsection (a) of this section, any
22 person convicted of a second or subsequent violation of the provisions of said subdivision or a

1 statute or ordinance of the United States or another state which contains the same essential elements
2 is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not
3 less than one nor more than five years, fined not more than \$25,000, or both imprisoned and fined.

4 (c) The provisions of subsection (a) of this section ~~shall~~ do not apply to:

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

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

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

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

14 (d) Notwithstanding any provision of this code to the contrary, any person who knowingly
15 possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated
16 precursor with the intent to use it in the manufacture of methamphetamine, or any person who

17 knowingly compensates, hires or provides other incentives for another person to purchase, obtain
18 or transfer any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated
19 precursor with the intent to use it in the manufacture of methamphetamine, or who knowingly

20 possesses a substance containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts,
21 optical isomers or salts of optical isomers in a state or form which is, or has been altered or
22 converted from the state or form in which these chemicals are, or were, commercially distributed is

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

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

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

12 (3) In addition to any administrative penalties provided by law, any violation of this
13 subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more than
14 \$10,000.

15 **§60A-10-6. Registration to sell, manufacture or distribute products; rule-making authority.**

16 The State Board of Pharmacy shall propose rules for legislative approval in accordance with
17 the provisions of article three, chapter twenty-nine-a of this code to require that every wholesaler,
18 manufacturer or distributor of any drug product containing as ~~their single~~ an active ingredient
19 ephedrine or pseudoephedrine or a substance identified on the supplemental list provided ~~for~~ in
20 section seven of this article shall obtain a registration and permit issued by the State Board of
21 Pharmacy to sell, distribute or transfer the product containing as their single active ingredient
22 ephedrine, pseudoephedrine or phenylpropanolamine.

1 **§60A-10-7. Restricted products; rule-making authority.**

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

11 (1) A process whereby pharmacies are made aware of all drug products that contain as an
12 active ingredient, ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a
13 Schedule V substance; and ~~must be sold, transferred or dispensed from behind a pharmacy counter;~~

14 (2) ~~A process whereby pharmacies and retail establishments are made aware of additional~~
15 ~~drug products added to Schedule V that are required to be placed behind the pharmacy counter for~~
16 ~~sale, transfer or distribution can be periodically reviewed and updated.~~

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

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

NOTE: The purpose of this bill is to control drug products that contain ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient. It creates a meth offender registry. A person listed on the registry would be prohibited from obtaining pseudoephedrine products without a prescription.

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