

Senate Bill No. 458

(By Senators Stollings and Kessler)

[Introduced February 11, 2015; referred to the Committee on Health and Human Resources; and

then to the Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §60A-2-210 and §60A-2-212 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60A-10-2, §60A-10-4 and §60A-10-7 of said code, all relating to controlling methamphetamine; requiring prescription to dispense drug products that contain active ingredient ephedrine, pseudoephedrine, phenylpropanolamine and other precursors of methamphetamine; moving certain drug products from Schedule V to Schedule IV; providing exception for drug products that cannot be feasibly converted into methamphetamine; defining terms; prohibiting pharmacies from selling certain drugs that can be used in production of methamphetamine without a prescription; creating criminal offense for possession of certain substances without a prescription with intent to transfer to another to make methamphetamine; removing outdated language; providing criminal penalties; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

1 That §60A-2-210 and §60A-2-212 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted; and that §60A-10-2, §60A-10-4 and §60A-10-7 of said code be amended
3 and reenacted, all to read as follows:

4 **ARTICLE 2. STANDARDS AND SCHEDULES.**

5 **§60A-2-210. Schedule IV.**

6 (a) Schedule IV shall consist of the drugs and other substances, by whatever official name,
7 common or usual name, chemical name, or brand name designated, listed in this section.

8 (b) *Narcotic drugs.* -- Unless specifically excepted or unless listed in another schedule, any
9 material, compound, mixture or preparation containing any of the following narcotic drugs, or their
10 salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

11 (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine
12 sulfate per dosage unit;

13 (2) D e x t r o p r o p o x y p h e n e
14 (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

15 (c) *Depressants.* -- Unless specifically excepted or unless listed in another schedule, any
16 material, compound, mixture or preparation which contains any quantity of the following substances,
17 including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and
18 salts of isomers is possible within the specific chemical designation:

19 (1) Alprazolam;

20 (2) Barbital;

21 (3) Bromazepam;

- 1 (4) Camazepam;
- 2 (5) Carisoprodol;
- 3 (6) Chloral betaine;
- 4 (7) Chloral hydrate;
- 5 (8) Chlordiazepoxide;
- 6 (9) Clobazam;
- 7 (10) Clonazepam;
- 8 (11) Clorazepate;
- 9 (12) Clotiazepam;
- 10 (13) Cloxazolam;
- 11 (14) Delorazepam;
- 12 (15) Diazepam;
- 13 (16) Dichloralphenazone;
- 14 (17) Estazolam;
- 15 (18) Ethchlorvynol;
- 16 (19) Ethinamate;
- 17 (20) Ethyl loflazepate;
- 18 (21) Fludiazepam;
- 19 (22) Flunitrazepam;
- 20 (23) Flurazepam;
- 21 (24) Fospropofol;

- 1 (25) Halazepam;
- 2 (26) Haloxazolam;
- 3 (27) Ketazolam;
- 4 (28) Loprazolam;
- 5 (29) Lorazepam;
- 6 (30) Lormetazepam;
- 7 (31) Mebutamate;
- 8 (32) Medazepam;
- 9 (33) Meprobamate;
- 10 (34) Methohexital;
- 11 (35) Methylphenobarbital (mephobarbital);
- 12 (36) Midazolam;
- 13 (37) Nimetazepam;
- 14 (38) Nitrazepam;
- 15 (39) Nordiazepam;
- 16 (40) Oxazepam;
- 17 (41) Oxazolam;
- 18 (42) Paraldehyde;
- 19 (43) Petrichloral;
- 20 (44) Phenobarbital;
- 21 (45) Pinazepam;

- 1 (46) Prazepam;
- 2 (47) Quazepam;
- 3 (48) Temazepam;
- 4 (49) Tetrazepam;
- 5 (50) Triazolam;
- 6 (51) Zaleplon;
- 7 (52) Zolpidem;
- 8 (53) Zopiclone.

9 (d) Any material, compound, mixture or preparation which contains any quantity of the
10 following substance, including its salts, isomers (whether optical, position or geometric) and salts
11 of such isomers whenever the existence of such salts, isomers and salts of isomers is possible:
12 Fenfluramine and Dexfenfluramine.

13 (e) *Stimulants*. -- Unless specifically excepted or unless listed in another schedule, any
14 material, compound, mixture or preparation which contains any quantity of the following substances
15 having a stimulant effect on the central nervous system, including its salts, isomers and salts of
16 isomers:

- 17 (1) Cathine ((+)-norpseudoephedrine);
- 18 (2) Diethylpropion;
- 19 (3) Fencamfamin;
- 20 (4) Fenproporex;
- 21 (5) Mazindol;

- 1 (6) Mefenorex;
- 2 (7) Modafinil;
- 3 (8) Pemoline (including organometallic complexes and chelates thereof);
- 4 (9) Phentermine;
- 5 (10) Pipradrol;
- 6 (11) Sibutramine;
- 7 (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

8 (f) Ephedrine, pseudoephedrine or phenylpropanolamine. -- Any compound, mixture or

9 preparation containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical

10 isomers, or salts of optical isomers except products which are for pediatric use primarily intended

11 for administration to children under the age of twelve and products which less than eleven percent

12 of the product can be used to manufacture methamphetamine as determined by the board, as set forth

13 in article ten of this chapter: *Provided*, That neither the offenses set forth in section four hundred

14 one, article four of this chapter, nor the penalties therein, are applicable to ephedrine,

15 pseudoephedrine or phenylpropanolamine, which is subject to the provisions of article ten of this

16 chapter.

17 (f)(g) Other substances. -- Unless specifically excepted or unless listed in another schedule,

18 any material, compound, mixture or preparation which contains any quantity of the following

19 substances, including its salts:

- 20 (1) Pentazocine;
- 21 (2) Butorphanol;

1 (3) tramadol hydrochloride.

2 Amyl nitrite, butyl nitrite, isobutyl nitrite and the other organic nitrites are controlled
3 substances and no product containing these compounds as a significant component shall be
4 possessed, bought or sold other than pursuant to a bona fide prescription or for industrial or
5 manufacturing purposes.

6 **§60A-2-212. Schedule V.**

7 (a) Schedule V shall consist of the drugs and other substances, by whatever official name,
8 common or usual name, chemical name, or brand name designated, listed in this section.

9 (b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound,
10 mixture or preparation containing any of the following narcotic drugs or their salts calculated as the
11 free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or
12 more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound,
13 mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug
14 alone:

15 (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

16 (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

17 (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

18 (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of
19 atropine sulfate per dosage unit;

20 (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

21 (6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine

1 sulfate per dosage unit.

2 (c) *Stimulants*. -- Unless specifically exempted or excluded or unless listed in another
3 schedule, any material, compound, mixture or preparation which contains any quantity of the
4 following substances having a stimulant effect on the central nervous system, including its salts,
5 isomers and salts of isomers:

6 (1) Pyrovalerone.

7 ~~(d) Any compound, mixture or preparation containing as its single active ingredient~~
8 ~~ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical~~
9 ~~isomers except products which are for pediatric use primarily intended for administration to children~~
10 ~~under the age of twelve: *Provided*, That neither the offenses set forth in section four hundred one,~~
11 ~~article four of this chapter, nor the penalties therein, shall be applicable to ephedrine,~~
12 ~~pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of~~
13 ~~this chapter.~~

14 ~~(d)~~ (d) *Depressants*. -- Unless specifically exempted or excluded or unless listed in another
15 schedule, any material, compound, mixture or preparation which contains any quantity of the
16 following substances having a depressant effect on the central nervous system, including its salts:

17 (1) Ezogabine [N-[2-amino-4-94-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester];

18 (2) Lacosamide [(R)-2-acetoamido- *N* -benzyl-3-methoxy-propionamide];

19 (3) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

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

21 **§60A-10-2. Purpose; findings.**

1 The Legislature finds:

2 (a) That the illegal production and distribution of methamphetamine is an increasing problem
3 nationwide and particularly prevalent in rural states such as West Virginia.

4 (b) That methamphetamine is a highly addictive drug that can be manufactured in small and
5 portable laboratories. These laboratories are operated by individuals who manufacture the drug in
6 a clandestine and unsafe manner, often resulting in explosions and fires that can injure not only the
7 individuals involved, but their families, neighbors, law-enforcement officers and firemen.

8 (c) That use of methamphetamine can result in fatal kidney and lung disorders, brain damage,
9 liver damage, blood clots, chronic depression, hallucinations, violent and aggressive behavior,
10 malnutrition, disturbed personality development, deficient immune system and psychosis. Children
11 born to mothers who are abusers of methamphetamine can be born addicted and suffer birth defects,
12 low birth weight, tremors, excessive crying, attention deficit disorder and behavior disorders.

13 (d) That in addition to the physical consequences to an individual who uses
14 methamphetamine, usage of the drug also produces an increase in automobile accidents, explosions
15 and fires, increased criminal activity, increased medical costs due to emergency room visits,
16 increases in domestic violence, increased spread of infectious diseases and a loss in worker
17 productivity.

18 (e) That environmental damage is another consequence of the methamphetamine epidemic.
19 Each pound of methamphetamine produced leaves behind five to six pounds of toxic waste.
20 Chemicals and byproducts that result from the manufacture of methamphetamine are often poured
21 into plumbing systems, storm drains or directly onto the ground. Clean up of methamphetamine

1 laboratories is extremely resource-intensive, with an average remediation cost of \$5,000.

2 (f) That it is in the best interest of every West Virginian to develop a viable solution to
3 address the growing methamphetamine problem. ~~in the State of West Virginia.~~

4 (g) That conversion-proof pseudoephedrine hydrochloride can provide an over-the-counter
5 option that cannot be used in the manufacture of methamphetamine.

6 ~~(f) (h) The Legislature finds That restricting access to over-the-counter~~ requiring a
7 prescription for drugs used that can be converted to facilitate production of methamphetamine is
8 necessary to protect the public safety of all West Virginians.

9 ~~(g) (i)~~ (i) That it is further in the best interests of every West Virginian to create impediments
10 to the manufacture of methamphetamine by requiring persons purchasing chemicals necessary to the
11 process to provide identification.

12 **§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor**
13 **to manufacture of methamphetamine or another controlled substance;**
14 **offenses; exceptions; penalties.**

15 (a) A pharmacy may not sell, transfer or dispense ~~to the same person, and a person may not~~
16 ~~purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a~~
17 ~~thirty-day period or more than forty-eight grams annually of ephedrine, pseudoephedrine or~~
18 ~~phenylpropanolamine without a prescription~~ unless less than eleven percent of the product can be
19 used to manufacture methamphetamine as determined by the board. ~~The limits shall apply to the~~
20 ~~total amount of ephedrine, pseudoephedrine and phenylpropanolamine contained in the products, and~~
21 ~~not the overall weight of the products.~~

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

6 (2) Any person who knowingly purchases, receives or otherwise possesses ephedrine,
7 pseudoephedrine or phenylpropanolamine in any form with the intent to transfer the substance to
8 someone that the person knows or should know will use the substance to manufacture
9 methamphetamine is guilty of 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 and confined.

11 ~~(2)~~ (3) Any pharmacy, wholesaler or other entity operating the retail establishment which
12 sells, transfers or dispenses a product in violation of this section is guilty of a misdemeanor and,
13 upon conviction, shall be fined not more than \$1,000 for the first offense, or more than \$10,000 for
14 each subsequent offense.

15 (b) Notwithstanding the provisions of ~~subdivision (a)(1)~~ subdivisions (1) and (2) of
16 subsection (a) of this section, any person convicted of a second or subsequent violation of the
17 provisions of said subdivision or a statute or ordinance of the United States or another state which
18 contains the same essential elements is guilty of a felony and, upon conviction, shall be imprisoned
19 in a state correctional facility for not less than one nor more than five years, fined not more than
20 \$25,000, or both imprisoned and fined.

21 (c) ~~The provisions of~~ Subsection (a) of this section ~~shall~~ does not apply to:

- 1 ~~(1) Products dispensed pursuant to a valid prescription;~~
- 2 ~~(2) (1) Drug products which are for pediatric use primarily intended for administration to~~
3 children under the age of twelve;
- 4 ~~(3) Drug products containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts~~
5 ~~or optical isomers or salts of optical isomers or other designated precursor which have been~~
6 ~~determined by the Board of Pharmacy to be in a form which is not feasible for being used for the~~
7 ~~manufacture of methamphetamine; or~~
- 8 ~~(4) (2) Persons lawfully possessing drug products in their capacities as distributors,~~
9 wholesalers, manufacturers, pharmacists, pharmacy interns, pharmacy technicians, or health care
10 professionals.
- 11 (d) Notwithstanding any provision of this code to the contrary, any person, who knowingly
12 possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated
13 precursor with the intent to use it in the manufacture of methamphetamine, who knowingly
14 compensates, hires or provides other incentives for another person to purchase, obtain or transfer any
15 amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated precursor with the
16 intent to use it in the manufacture of methamphetamine or who knowingly possesses a substance
17 containing ephedrine, pseudoephedrine or phenylpropanolamine ~~or their salts, optical isomers or~~
18 ~~salts of optical isomers~~ in a state or form which is, or has been altered or converted from the state
19 or form in which these chemicals are, or were, commercially distributed is guilty of a felony and,
20 upon conviction, shall be imprisoned in a state correctional facility for not less than two nor more
21 than ten years, fined not more than \$25,000, or both imprisoned and fined.

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

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

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

13 **§60A-10-7. Restricted products; rule-making authority.**

14 ~~(a) On or before July 1, 2005,~~ The board of Pharmacy shall promulgate emergency and
15 legislative rules at any time in 2015 pursuant to the provision of article three, chapter twenty-nine-a
16 of this code to ~~implement a~~ continue the program wherein the board of Pharmacy shall consults with
17 the superintendent of the State Police in identifying drug products which are a designated precursor,
18 in addition to those that contain ephedrine, pseudoephedrine or phenylpropanolamine, that are
19 commonly being used in the production and distribution of methamphetamine. Those drug products
20 which the superintendent of the State Police have demonstrated by empirical evidence are commonly
21 used in the manufacture of methamphetamine shall be added to a supplemental list and shall be

1 subject to all of the restrictions of this article. ~~These~~ The rules established pursuant to this section
2 shall include:

3 (1) A process whereby pharmacies are made aware of all drug products that contain
4 ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule ~~V~~ IV
5 substance and ~~must~~ shall be sold, transferred or dispensed from behind a pharmacy counter;

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

9 (3) A process whereby pharmacies are made aware of all drug products that less than eleven
10 percent of the product can be used to manufacture methamphetamine that contain ephedrine,
11 pseudoephedrine or phenylpropanolamine, and may be sold, transferred or dispensed over the
12 counter.

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

NOTE: The purpose of this bill is to require a prescription to dispense drug products that contain as an active ingredient ephedrine, pseudoephedrine, phenylpropanolamine and other precursors of methamphetamine. The bill exempts certain products from this requirement. The bill provides criminal penalties and provides rule-making authority.

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