

H. B. 3016

(BY DELEGATE(S) ELLINGTON, HOUSEHOLDER, ROHRBACH,
STANSBURY, HILL AND WESTFALL)

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

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 12A. REGISTRY OF CONVICTIONS FOR OPERATING A CLANDESTINE DRUG LABORATORY.

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

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

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

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

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

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

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

14 (3) The conviction date;

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

16 and

17 (5) Identification of the criminal offense and to the extent
18 possible and the county of conviction.

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

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

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

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

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

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

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

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

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

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.**

1 (a) A pharmacy may not sell, transfer or dispense to the
2 same person, and a person may not purchase more than three and

3 six-tenths grams per day, more than seven and two-tenths grams
4 in a thirty-day period or more than forty-eight grams annually of
5 ephedrine, pseudoephedrine or phenylpropanolamine without a
6 prescription. The limits shall apply to the total amount of
7 ephedrine, pseudoephedrine and phenylpropanolamine contained
8 in the products, and not the overall weight of the products.

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

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

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

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

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

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

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

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

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

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

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

63 (d) Notwithstanding any provision of this code to the
64 contrary, any person who knowingly possesses any amount of
65 ephedrine, pseudoephedrine, phenylpropanolamine or other
66 designated precursor with the intent to use it in the manufacture
67 of methamphetamine, or any person who knowingly
68 compensates, hires or provides other incentives for another
69 person to purchase, obtain or transfer any amount of ephedrine,
70 pseudoephedrine, phenylpropanolamine or other designated
71 precursor with the intent to use it in the manufacture of
72 methamphetamine, or who knowingly possesses a substance
73 containing ephedrine, pseudoephedrine or phenylpropanolamine
74 or their salts, optical isomers or salts of optical isomers in a state
75 or form which is, or has been altered or converted from the state
76 or form in which these chemicals are, or were, commercially
77 distributed is guilty of a felony and, upon conviction, shall be
78 imprisoned in a state correctional facility for not less than two
79 nor more than ten years, fined not more than \$25,000, or both
80 imprisoned and fined.

81 (e)(1) Any pharmacy, wholesaler, manufacturer or
82 distributor of drug products containing ephedrine,

83 pseudoephedrine, phenylpropanolamine, their salts or optical
84 isomers or salts of optical isomers or other designated precursor
85 shall obtain a registration annually from the ~~State~~ Board of
86 Pharmacy as described in section six of this article. ~~Any such~~
87 ~~pharmacy, wholesaler, manufacturer or distributor shall keep~~
88 ~~complete records of all sales and transactions as provided in~~
89 ~~section eight of this article. The records shall be gathered and~~
90 ~~maintained pursuant to legislative rule promulgated by the Board~~
91 ~~of Pharmacy.~~

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

95 (3) In addition to any administrative penalties provided by
96 law, any violation of this subsection is a misdemeanor,
97 punishable upon conviction by a fine in an amount not more than
98 \$10,000.

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

1 The ~~State~~ Board of Pharmacy shall propose rules for
2 legislative approval in accordance with the provisions of article

3 three, chapter twenty-nine-a of this code to require that every
4 wholesaler, manufacturer or distributor of any drug product
5 containing as ~~their single~~ an active ingredient ephedrine or
6 pseudoephedrine or a substance identified on the supplemental
7 list provided ~~for~~ in section seven of this article shall obtain a
8 registration and permit issued by the ~~State~~ Board of Pharmacy to
9 sell, distribute or transfer the product containing as their single
10 active ingredient ephedrine, pseudoephedrine or
11 phenylpropanolamine.

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

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

11 demonstrated by empirical evidence are commonly used in the
12 manufacture of methamphetamine shall be added to a
13 supplemental list and ~~shall be~~ subject to all of the restrictions of
14 this article. ~~These~~ Rules established pursuant to this section shall
15 include:

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

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

26 (b) ~~At any time after July 1, 2005, the Board of Pharmacy,~~
27 ~~upon the recommendation of the Superintendent of the State~~
28 ~~Police, shall promulgate emergency and legislative rules~~
29 ~~pursuant to the provision of article three, chapter twenty-nine-a~~
30 ~~of this code to implement an updated supplemental list of~~

31 ~~products containing the controlled substances ephedrine,~~
32 ~~pseudoephedrine or phenylpropanolamine as an active ingredient~~
33 ~~or any other drug used as a precursor in the manufacture of~~
34 ~~methamphetamine, which the Superintendent of the State Police~~
35 ~~has demonstrated by empirical evidence is being used in the~~
36 ~~manufacture of methamphetamine. This listing process shall~~
37 ~~comport with the requirements of subsection (a) of this section.~~
38 A process whereby pharmacies are made aware of all drug
39 products that are less than eleven percent of the product can be
40 used to manufacture methamphetamine that contain ephedrine,
41 pseudoephedrine or phenylpropanolamine, and may be sold,
42 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.