

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2611

**FISCAL
NOTE**

2015 Carryover

(BY DELEGATE PERDUE, HAMILTON, MORGAN, ROWE,
ROHRBACH, PUSHKIN, GUTHRIE, MILEY, ANDERSON,
BOGGS, AND BORDER)

[Introduced January 13, 2016; referred to the
Committee on Health and Human Resources then the
Judiciary.]

1 BILL to repeal §60A-10-5, §60A-10-6, §60A-10-8 and §60A-10-11 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §60A-2-210 and §60A-2-212 of said code; and
3 to amend and reenact §60A-10-2, §60A-10-3, §60A-10-4 and §60A-10-7; all relating to
4 controlling methamphetamine; requiring certain drug products be obtained by prescription
5 only; moving certain drug products from schedule V to schedule IV; providing an exception
6 for drug products that cannot be feasibly converted into methamphetamine; defining
7 terms; prohibiting pharmacies from selling certain drugs that can be used in the production
8 of methamphetamine without a prescription; creating a criminal offense for possession of
9 certain substances without a prescription with intent to transfer to another to make
10 methamphetamine; permitting the sale of certain drugs without a prescription; removing
11 the requirements of the Multi-State Real-Time Tracking System; removing outdated
12 language; providing criminal penalties; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

1 That §60A-10-5, §60A-10-6, §60A-10-8 and §60A-10-11 of the Code of West Virginia,
2 1931, as amended, be repealed; that §60A-2-210 and §60A-2-212 of said code be amended and
3 reenacted; that §60A-10-2, §60A-10-3, §60A-10-4 and §60A-10-7 of said code be amended and
4 reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-210. Schedule IV.

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

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

6 below:

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

9 (2) Dextropropoxyphene
10 (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

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

15 (1) Alprazolam;

16 (2) Barbital;

17 (3) Bromazepam;

18 (4) Camazepam;

19 (5) Carisoprodol;

20 (6) Chloral betaine;

21 (7) Chloral hydrate;

22 (8) Chlordiazepoxide;

23 (9) Clobazam;

24 (10) Clonazepam;

25 (11) Clorazepate;

26 (12) Clotiazepam;

27 (13) Cloxazolam;

28 (14) Delorazepam;

29 (15) Diazepam;

- 30 (16) Dichloralphenazone;
- 31 (17) Estazolam;
- 32 (18) Ethchlorvynol;
- 33 (19) Ethinamate;
- 34 (20) Ethyl loflazepate;
- 35 (21) Fludiazepam;
- 36 (22) Flunitrazepam;
- 37 (23) Flurazepam;
- 38 (24) Fospropofol;
- 39 (25) Halazepam;
- 40 (26) Haloxazolam;
- 41 (27) Ketazolam;
- 42 (28) Loprazolam;
- 43 (29) Lorazepam;
- 44 (30) Lormetazepam;
- 45 (31) Mebutamate;
- 46 (32) Medazepam;
- 47 (33) Meprobamate;
- 48 (34) Methohexital;
- 49 (35) Methylphenobarbital (mephobarbital);
- 50 (36) Midazolam;
- 51 (37) Nimetazepam;
- 52 (38) Nitrazepam;
- 53 (39) Nordiazepam;

- 54 (40) Oxazepam;
- 55 (41) Oxazolam;
- 56 (42) Paraldehyde;
- 57 (43) Petrichloral;
- 58 (44) Phenobarbital;
- 59 (45) Pinazepam;
- 60 (46) Prazepam;
- 61 (47) Quazepam;
- 62 (48) Temazepam;
- 63 (49) Tetrazepam;
- 64 (50) Triazolam;
- 65 (51) Zaleplon;
- 66 (52) Zolpidem;
- 67 (53) Zopiclone.

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

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

- 76 (1) Cathine ((+)-norpseudoephedrine);
- 77 (2) Diethylpropion;

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

(f) Ephedrine, pseudoephedrine or phenylpropanolamine. -- Any compound, mixture or preparation containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve and products which less than eleven percent of the product can be used to manufacture methamphetamine as determined by the board, as set forth in article ten of this chapter: *Provided*, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, are applicable to ephedrine, pseudoephedrine or phenylpropanolamine, which is subject to the provisions of article ten of this chapter.

~~(f)~~ (g) Other substances. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine;
(2) Butorphanol;

(3) tramadol hydrochloride.

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

§60A-2-212. Schedule V.

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

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

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

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

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

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

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

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) *Stimulants.* -- Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the

following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone.

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

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

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

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

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

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-2. Purpose; findings.

The Legislature finds:

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

(b) That methamphetamine is a highly addictive drug that can be manufactured in small and portable laboratories. These laboratories are operated by individuals who manufacture the drug in a clandestine and unsafe manner, often resulting in explosions and fires that can injure

7 not only the individuals involved, but their families, neighbors, law-enforcement officers and
8 firemen.

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

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

20 (e) That environmental damage is another consequence of the methamphetamine
21 epidemic. Each pound of methamphetamine produced leaves behind five to six pounds of toxic
22 waste. Chemicals and byproducts that result from the manufacture of methamphetamine are
23 often poured into plumbing systems, storm drains or directly onto the ground. Clean up of
24 methamphetamine laboratories is extremely resource-intensive, with an average remediation cost
25 of \$5,000.

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

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

30 ~~(f) (h) The Legislature finds That restricting access to over-the-counter~~ requiring a

31 prescription for drugs used that can be converted to facilitate production of methamphetamine is
32 necessary to protect the public safety of all West Virginians.

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

§60A-10-3. Definitions.

1 In this article:

2 (a) "Board of Pharmacy" or "board" means the West Virginia Board of Pharmacy
3 established by the provisions of article five, chapter thirty of this code.

4 (b) "Designated precursor" means any drug product made subject to the requirements of
5 this article by the provisions of section ten of this article.

6 (c) "Distributor" means any person within this state or another state, other than a
7 manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug
8 product to any person who is not the ultimate user or consumer of the product.

9 (d) "Drug product" means a pharmaceutical product that contains ephedrine,
10 pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list
11 provided in section seven of this article ~~which may be sold without a prescription~~ and which is
12 labeled for use by a consumer in accordance with the requirements of the laws and rules of this
13 state and the federal government.

14 (e) "Ephedrine " means ephedrine, its salts or optical isomers or salts of optical isomers.

15 (f) "Manufacturer" means any person within this state who produces, compounds,
16 packages or in any manner initially prepares for sale or use any drug product or any such person
17 in another state if they cause the products to be compounded, packaged or transported into this
18 state.

~~(g) "National Association of Drug Diversion Investigators" or "NADDI" means the nonprofit 501(c)(3) organization established in 1989, made up of members who are responsible for investigating and prosecuting pharmaceutical drug diversion, and that facilitates cooperation between law enforcement, health care professionals, state regulatory agencies and pharmaceutical manufacturers in the investigation and prevention of prescription drug abuse and diversion.~~

~~(h) "Multi-State Real-Time Tracking System" or "MSRTTS" means the real-time electronic logging system provided by NADDI at no cost to states that have legislation requiring real-time electronic monitoring of precursor purchases, and agree to use the system. MSRTTS is used by pharmacies and law enforcement to track sales of over-the-counter (OTC) cold and allergy medications containing precursors to the illegal drug, methamphetamine.~~

~~(i) (g) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.~~

~~(j) (h) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of optical isomers.~~

~~(k) (i) "Precursor" means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.~~

~~(l) (j) "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care~~ has the same meaning as defined in article five, chapter thirty of this code.

~~(m) (k) "Pharmacy intern" has the same meaning as the term "intern" as set forth in section one-b, article five, chapter thirty of this code.~~

~~(n) (l) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or display for sale at retail and pharmacist care is provided outside~~

~~of this state where drugs are dispensed and pharmacist care is provided to residents of this state~~
has the same meaning as set forth in article five, chapter thirty of this code.

~~(e)~~ (m) "Pharmacy counter" means an area in the pharmacy restricted to the public where controlled substances are stored and housed and where controlled substances may only be sold, transferred or dispensed by a pharmacist, pharmacy intern or pharmacy technician.

~~(p)~~ (n) "Pharmacy technician" ~~means a registered technician who meets the requirements for registration~~ has the same meaning as set forth in article five, chapter thirty of this code.

~~(q)~~ (o) "Retail establishment" means any entity or person within this state who sells, transfers or distributes goods, including over-the-counter drug products, to an ultimate consumer.

~~(r)~~ (p) "Schedule V" means the schedule of controlled substances set out in section two hundred twelve, ~~section~~ article two of this chapter.

~~(s)~~ (q) "Superintendent of the State Police" or "Superintendent" means the Superintendent of the West Virginia State Police as set forth in ~~section five~~, article two, chapter fifteen of this code.

~~(t)~~ (r) "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers or in any manner furnishes a drug product to any other person in this state for the purpose of being resold.

§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.

(a) A pharmacy may not sell, transfer or dispense ~~to the same person, and a person may not purchase more than three and six-tenths grams per day, more than seven and two-tenths grams in a thirty-day period or more than forty-eight grams annually of~~ ephedrine, pseudoephedrine or phenylpropanolamine without a prescription unless less than eleven percent of the product can be used to manufacture methamphetamine as determined by the board. The

~~limits shall apply to the total amount of ephedrine, pseudoephedrine and phenylpropanolamine contained in the products, and not the overall weight of the products.~~

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

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

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

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

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

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

~~(2)~~ (1) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;

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

~~(4)~~ (2) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy interns, pharmacy technicians, or health care professionals.

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

~~(e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor shall obtain a registration annually from the State Board of Pharmacy as described in section six of this article. Any such pharmacy, wholesaler,~~

54 ~~manufacturer or distributor shall keep complete records of all sales and transactions as provided~~
55 ~~in section eight of this article. The records shall be gathered and maintained pursuant to~~
56 ~~legislative rule promulgated by the Board of Pharmacy.~~

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

59 ~~(3) In addition to any administrative penalties provided by law, any violation of this~~
60 ~~subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more than~~
61 ~~\$10,000.~~

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

1 ~~(a) On or before July 1, 2005, The board of Pharmacy shall promulgate emergency and~~
2 ~~legislative rules at any time in 2015 pursuant to the provision of article three, chapter twenty-nine-a~~
3 ~~of this code to implement a continue the program wherein the board of Pharmacy shall consults~~
4 ~~with the superintendent of the State Police in identifying drug products which are a designated~~
5 ~~precursor, in addition to those that contain ephedrine, pseudoephedrine or phenylpropanolamine,~~
6 ~~that are commonly being used in the production and distribution of methamphetamine. Those~~
7 ~~drug products which the superintendent of the State Police have demonstrated by empirical~~
8 ~~evidence are commonly used in the manufacture of methamphetamine shall be added to a~~
9 ~~supplemental list and shall be subject to all of the restrictions of this article. ~~These~~ The rules~~
10 ~~established pursuant to this section shall include:~~

11 (1) A process whereby pharmacies are made aware of all drug products that contain
12 ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule ~~V~~ IV
13 substance and ~~must~~ shall 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 sale, transfer or distribution can be periodically reviewed and updated.

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

~~(b) At any time after July 1, 2005, the Board of Pharmacy, upon the recommendation of the superintendent of the State Police, shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement an updated supplemental list of products containing the controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient or any other drug used as a precursor in the manufacture of methamphetamine, which the superintendent of the State Police has demonstrated by empirical evidence is being used in the manufacture of methamphetamine. This listing process 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. The bill also repeals §60A-10-5, §60A-10-6, §60A-10-8 and §60A-10-11.

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